

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CFA No. 190/2014

Reserved on:- **25.07.2022**
Pronounced on:- **25.08.2022**

National Highway Authority of India

...Appellant(s)

Through: Mr. R.A.Jan, Sr. Advocate with
Mr.Taha Khaleel, Advocate

Vs.

Ali Mohammad Dar & Anr.

...Respondent(s)

Through: M/S Khurshid Ahmad Ganai &
Arif Sikandar, Advocates for R-1.
Mr. M.A.Chashoo, AAG for R-2 .

CORAM:

HON'BLE MR. JUSTICE MD. AKRAM CHOWDHARY, JUDGE

JUDGMENT

1. National Highway Authority of India (hereinafter called 'appellant') vide its communication No. PD/JMU/2294 dated 28.12.2005 indented for acquisition of land for construction / 4-lanning of National Highway (construction of bye pass) at village Sangam Tehsil Bijbehara, to the Collector Land Acquisition Anantnag.
2. The Collector (Addl. Deputy Commissioner) Anantnag, after initiating the land acquisition proceedings in terms of **Sections 4, 6, 7, 9 and 9A** of the **Land Acquisition Act**, acquired the land measuring 139 kanals, 02 marlas and 02 sirsai within the alignment situated at village Sangam Tehsil Bijbehara District Anantnag and on the basis of location of the land, its agricultural utility, rates of compensation paid in the vicinity and the report furnished by local Tehsildar, the compensation to the land owners was assessed @

Rs.8.50 lac per kanal along-with the solatium @ 15% over and above the amount of compensation, after approval from the Divisional Commissioner Kashmir Srinagar vide his No. Div.Com /LAS-Acq/1262/2201 dated 14.05.2012. However, final award left structures and trees on this land, to be compensated.

3. The land measuring 06 kanals 02 marlas situated at Sangam Bijbehara owned by one Ali Mohammad Dar (hereinafter called 'respondent No.1') comprised the afore-stated acquired land but he on not being satisfied with the compensation awarded, moved an application to the Collector to make Reference under **Section 18** of the Land Acquisition Act to the District Court Anantnag for determination of the market value of the property of respondent No.1 acquired by the Collector.
4. In the application, it was claimed that the Collector had not assessed the compensation of the land and the Passenger Wayside Amenities raised by respondent No.1 known by the name of 'Shan-e-Kashmir' properly; that he had not been awarded compensation for re-construction of 'Passenger Wayside Amenities; that his land was at the advantageous place abutting National Highway and was being used for commercial purposes and its potential was high as compared to other lands; that the market value at the time of acquisition was Rs.1.50 lac per marla; that the land had longer frontage of 150 meters, and with the acquisition of the land entire business of respondent No.1 had come to standstill in absence of rehabilitation package and cost of re-construction as per the assessment made by R&B Department and Indian Oil Corporation; that the High Level Committee constituted by the Government

headed by Divisional Commissioner, had resolved that shifting of Petrol Pump, Tankers / wells can be decided after joint inspection of Beacon Authorities and Collector on spot, who visited on spot and it was decided that the Petrol Pump holders will bring assessment from concerned Oil Companies within one month so that the Collector will make payment accordingly.

5. Respondent No.1 demanded payment of 80% of the amount to be released in his favour, which he was ready to accept under protest and prayed for Reference to be made.
6. The Collectorate vide No. 303/LA-Ang dated 06.06.2013 conceded the land owner's request and referred the matter to the court of learned Principal District Judge Anantnag (hereinafter called 'Reference court'), in terms of Section 18 of the Land Acquisition Act for determination of the market value of the acquired property of the applicant.
7. The Reference court, on the basis of rival pleadings of the parties- land owner, indenting authority and Collectorate, framed the following issues:-

*“1. Whether the land measuring 6 kanals 2 marlas under survey Nos. 271, 272 and 273 situated at Sangam Bijbehara alongwith project known as Shani Kashmir including passenger oriented way side amenities and the filling station falling under the aforesaid survey Nos. was acquired by the Collector Land Acquisition, Anantnag for construction of 4 Lanning National High Way?
OPP*

2. Whether the petitioner was not paid compensation of the land measuring 6 kanals 2 marlas under S.Nos. 271, 272, 273 as per market

value and if so what is the real market value of the land? OPP

3. Whether the petitioner was not paid the compensation for shifting and reconstruction of his project known as Shani Kashmir which include passenger oriented way side amenities alongwith filling station under survey Nos. 271, 272 and 273 situated at Sangam, Bijbehara as a consequence of shifting of his place of business, severing of his land from other land and loss of earnings. If so what is the extent of compensation to which the petitioner is entitled under the aforesaid Heads in terms of Section 23 sub clauses 4, 5 and 6 of the Land Acquisition Act? OPP

4. Whether the petitioner has been paid the compensation after consideration of the market value and commercial utility of the land which came under the road alignment and there is no provision in the State Land Acquisition Act for compensation on account of reconstruction purposes? OPR”

- 8.** The Reference court, on the basis of evidence led by the parties, vide its judgment dated **15.07.2014**, determined the compensation payable in favour of respondent Ali Mohamad Dar for his property as follows:-

<i>Compensation of land measuring 6 kanals 2 marlas falling under survey No. 271, 272 and 273 situated at Sangam, Bijbehara ;</i>	<i>Rs. 30.00 lac per kanal.</i>
<i>Compensation for Shan-e-Kashmir Passenger Oriented wayside amenities project as per EXPW-1/1 ;</i>	<i>Rs. 155.96 lac.</i>
<i>Compensation for construction of proposed single storey dormitory Shane Kashmir;</i>	<i>Rs. 11.27 lac.</i>
<i>Compensation for reinstallation of the petrol outlet;</i>	<i>Rs. 66,70,600/-</i>

<i>Compensation for loss of earnings from the date of notification till completion of the petrol outlet ;</i>	<i>Rs. 24.00 lac.</i>

9. Aggrieved of the judgment passed in Reference under Section 18 of the Land Acquisition Act by the Reference court, the appellant-National Highway Authority of India filed the instant Civil 1st Appeal and assailed the same on the following grounds:-

a) *That the impugned judgment and decree has been passed by the Reference court while relying on oral evidence without any documentary proof / evidence and, therefore, the result of proceedings is non-est in the eyes of law as the Reference court has come to wrong conclusion by enhancing the compensation from Rs. 8.50 lac + 15% Jabrina per Kanal to Rs. 30 lacs, without any material on record. It is further submitted that approximately 3700 Kanal of land in District Anantnag for construction of four lanning project highway has been acquired at the approximate rate of Rs. 6-8 lacs per kanal, whereas the rate of Rs. 30 lac per kanal, as granted by the Reference court, is totally unfounded and without any basis.*

b) *That the Reference court without any material on record has burdened the appellant with huge liability on account of enhancement in compensation for land. It is submitted that none of the witnesses have quoted any personal transaction with documentary evidence which substantiate the rate they were alleging nor any registered sale-deed has been produced to suggest the site value of land in the area. The impugned judgment and decree, as such, deserves to be set aside.*

- c) *That in terms of the impugned judgment and decree the Reference court has awarded compensation to respondent No.1 on account of re-installation of petrol outlet to the tune of Rs. 66,70,600/-, when the fact is that there is no such provision under Land Acquisition Act for grant of shifting / reinstallation charges of structures/establishments.*
- d) *That an amount of Rs. 24 lac has been awarded in favor of respondent No. 1 on account of compensation for loss of earning from the date of notification till completion of the petrol outlet, which is totally against the facts of the case. It is further submitted that the petrol outlet of respondent no.1 has never been closed as it has always been operational. The award of compensation on account of loss of earnings, based on incorrect assumption, is perverse and renders the impugned judgment as bad in the eyes of law.*
- e) *That respondent No. 1 in no case was entitled for compensation of relocation charges as per J&K Land Act but still Reference court has relied upon the estimates made by JE/AE of J&K Sports Council, which at all was not entertainable.*
- f) *That respondent no.1 has received the compensation in pursuance of the court orders. He has no legal right or justification to say that he was not satisfied with the same. It is submitted that respondent no.1 has received full payment of compensation.*
- g) *That the Reference court has relied upon the minutes of meeting chaired by Divisional Commissioner (Kashmir) regarding removal and rehabilitation of dislocated shopkeepers, Unit holders etc. These minutes of meeting in no case were binding in the present case as in the present case the process has been initiated under compulsory provisions of Land Acquisition Act. The said fact was brought to the*

notice of Reference court, which, however, was not appreciated at all.

h) That the issues framed by the Reference court were not required to be formulated while dealing with the reference because when erroneous issues are formulated, focus of the court and the parties shifts from the main controversy which could otherwise be dealt in accordance with the law.

i) That the Reference court is not a court of appeal but in the instant case has acted like an appellate court while deciding the controversy.

j) That Section 23 of the Land Acquisition Act lays down the mechanism for determination of compensation in respect of acquisition, which are as:

-Market value at the time of notification;

-Damages sustained at the time of taking possession;

-Damages by reasons of separating such land from the other land;

-Damages to the property moveable or immovable or earnings;

-Interested persons compelled to change residence or;

-Diminution of profits.

k) That the Hon'ble Apex Court from time to time has laid down the guidelines for taking into consideration the evidence to support the claim against the award passed, while determining the market value and the compensation in lieu of the land acquired, which in the instant case is lacking. Hence the impugned judgment and decree deserves to be set aside.

10. Heard learned counsel for the parties at length, perused the Reference Court record available on file and considered.

11. Mr. R.A.Jan, Learned Senior Counsel, appearing for the appellant, vehemently argued that the impugned judgment, awarding the compensation by the Reference court in excess to the amount already awarded by the Collector, clearly offends the very mandate of Section 25 of the Land Acquisition Act. It is further argued that respondent No.1 had accepted the compensation amount awarded by the Collector Land Acquisition, which fact has been admitted by respondent No.1 in the memo of appeal as well. Furthermore, respondent No.1 has not chosen to abide by the procedure established under the Land Acquisition Act and instead chose to have recourse to civil suits instituted by him in tandem in the courts of learned Sub Judge Bijbehara and learned Principal District Judge Anantnag, even statutory notice issued under Section 9 of the Act has not been responded to by him. The inevitable consequence flowing from non-response to statutory notice is clearly stipulated in Section 25 of the Act. Learned senior counsel further argued that the impugned judgment suffers from both substantive and procedural ultra-vires. It is further stated that respondent No.1 had taken recourse to Section 18 of the Land Acquisition Act only after the entire amount of compensation was released in his favour through the intervention of Civil court.

12. Learned senior counsel further argued that on a bare look of the provisions of the National Highways Act, it is evident and apparent that in the case of compulsory acquisition of land, it is the provisions of the National Highways Act, that occupy the field and being a subject specific provision relating to specific and defined subject viz. compulsory acquisition of land for the National Highway Authority,

is regarded in law as an exception to and would prevail over general provisions relating to the compulsory land acquisitions under the general law viz. Land Acquisition Act.

13. Learned senior counsel for the appellant has referred to the judgment of Hon'ble Supreme Court in a case titled **Laxmi Chand & Ors. Vs. Gram Panchayat, Kararia & Ors.**, reported as **AIR 1996 SC 523**, wherein it has been held that the scheme of the Land Acquisition Act is complete in itself and thereby the jurisdiction of the Civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The Civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has, is to approach the constitutional courts, viz., the High Court and the Supreme Court under their plenary powers under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the Civil court.

14. Mr. Jan, Learned Senior Counsel has also referred to couple of judgments of the Supreme court, enunciating the broad principles for valuation of the lands for the purposes of compensation payable for acquisition of the lands and finally prayed to allow the appeal and set aside the impugned judgment.

15. Mr. Khurshid Ahmad Ganai, Learned Counsel appearing for the respondents emphatically contended that the present appeal is liable to be dismissed as there is no merit in it; that as per the judgment delivered by the Constitution Bench of Hon'ble Supreme Court, reported in '**(1995) 2 Supreme Court Cases 326**', the local

authority or company for whom the land is acquired is though a proper party in the proceedings before Reference Court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard, however, in the event of enhancement of the amount of compensation by the Reference court, if the Government does not file an appeal, the local authority can file an appeal against the award in the High Court after obtaining leave of the Court; that as per Section 23 of the Land Acquisition Act, the market value of the land on the date of publication of the declaration has to be taken into consideration and the Collector cannot ignore the advantages of the land, its potential value, proximity of the land acquired from the road side and classification of land.

- 16.** Learned counsel further contended that the present appeal has been filed by the Project Director of the Project Implementation Unit Srinagar of the National Highway Authority of India, who is not competent to file the same in terms of the provisions of Sections 1,2,3,7,15,16,25 and 26 of the National Highway Authority of India Act 1998. The appeal, as such, is not maintainable and is liable to be dismissed at the very outset. He further argued that the Reference made by the Collector to learned District Judge Anantnag is within time because the final award has been passed by the Collector on **01.04.2013** while as the Reference to learned District Judge has been made on **06.06.2013**, as the award has been made by the Collector in absence of respondent No.1, who had received compensation under protest. In order to substantiate this aspect of the matter, attention

was drawn to an application moved by the respondent to Collector on 02.09.2009 wherein it has been brought to the notice of the Collector that the respondent is going to receive the compensation under protest. Further, the record maintained by the Collector while disbursing the compensation also reflects that the respondent has received the amount of compensation under protest.

17. Learned counsel next argued that the counsel for the Collector and the counsel for the intending department in their objections with regard to the reference have denied the facts pleaded in the reference without submitting any amount of explanation as to how they are controverting the facts pleaded in the Reference. The law of pleadings on this aspect of the matter is very clear that once a denial is made and that the denial is general, non specific and evasive, the defendants leave a great lacuna in the written statement. It always wants the parties, before the court to be upright, candid and straight forward. In view of this principle of law, it can be safely presumed that the appellant and the proforma respondent in the present case have admitted the facts pleaded in the Reference. Consequently, the appellant in the present appeal cannot plead those facts which he was required to plead and prove before the Reference Court. The appeal as such is not maintainable. The aforesaid proposition of law is supported by an authority of this Court reported in '**1996 SLJ 49**'.

18. Mr. Ganai, further contended that the concept of compensation has initially been examined by a Bench of 11 Judges of the Supreme Court in a judgment reported in '**1970 (1) SCC 248**'. Para 93 of the said judgment is being relied in particular with observations as:

“The broad object underlying the principle of valuation is to award to the owner the equivalent of his property with its existing advantages and its existing potentialities. Where there is an established market for the property acquired the problem of valuation presents little difficulty. Where there is no established market for the property, the object of the principle of valuation must be to pay to the owner for what he has lost, including the benefit of advantages present as well as future, without taking into account the urgency of acquisition, the disinclination of the owner to part with the property, and the benefit which the acquirer is likely to obtain by the acquisition”.

19. Learned counsel for respondent No.1 submits that in the present case the appellant and proforma respondent No.2 have not produced any evidence before the Reference court. To determine the market value of the acquired property is a question of fact and is required to be proved on the basis of evidence. But when the appellant and proforma respondent have not produced any evidence before the Reference court, on shifting of onus to them, after respondent No.1 had completed the evidence, then the appellant at this stage through the medium of present appeal, cannot impeach the veracity of the evidence led by respondent No.1 before the Reference court. The appeal, as such, is liable to be dismissed.

20. The appellant authority has assailed the impugned judgment passed by the Reference Court on many counts. The first and the foremost ground for assailing the award is that the respondent- land owner having not responded to the execution proceedings before the Collector was not within his rights to agitate the award passed by the Collector, as such, the Reference was not maintainable in view of **Section 25** of the

Land Acquisition Act. However, this plea raised by the appellant authority seems to be misplaced for the reason that in Para-5 of the award passed by the Collector, it has been recorded that the land owners raised objections, therefore, it cannot be said that the respondent-land owner had not participated in the execution proceedings conducted by the Collector.

21. Secondly, it has been asserted by the appellant that the respondent-land owner had received 100% compensation, as such, after the receipt of compensation, the respondent was not competent to ask for the Reference to the Collector, and the Reference on that count is misconceived. Hon'ble Apex Court in its judgment titled **State of Gujarat & Ors. Vs. Daya Shamji Bhai & Ors.** reported as (1995) 5 SCC 746 has held in Para-6:-

“....The right and entitlement to seek reference would, therefore, arise when the amount of compensation was received under protest in writing which would manifest the intention of the owner of non-acceptance of the award....”

On perusal of the Xerox copies of the record received from the Collector, it is found that the compensation for the structural units assessed by the PWD had been received by the respondent-land owner under protest, which means that the appellant has reserved his right of asking for Reference.

22. Thirdly, the learned counsel argued that the respondent-land owner had adopted the novel method of moving Civil Courts of Sub Judge Bijbehara and District Judge Anantnag, by filing suits with the prayer to direct valuation of the structures over

his acquired land and the assessment made in pursuance to those directions had been awarded by the Reference Court without incorporation of the same in the award passed by the Collector, though the jurisdiction of Civil Courts was ousted under the scheme of Land Acquisition Act. On perusal of the award passed by the Collector, it transpires that the award has been passed with regard to the land only excluding the infrastructures raised thereon by the land owner. The case of the respondent is that he had raised the complex including Petrol outlet and some other Units, total 10 Units on both sides of the road, the land underneath of which was acquired for construction of National Highway. It appears from the acquisition proceedings before the Collector that the Collector had not taken pains for the assessment of the structures comprising of 10 Units owned by the respondent as land owner. In such a situation, the respondent was left with no other option except to invoke the jurisdiction of Civil Courts seeking for assessment/valuation of the Units owned by him and that too by the Government Agencies, therefore, it cannot be said that the respondent had in any manner managed the valuation of the structures at his whim. It was open to the Collector and the indenting department to file the appeal, if aggrieved against the orders of the courts directing valuation or to have challenged the enhancement/valuation of the costs of the structures. When the Collector had neither of its own taken steps for valuation of the structures nor challenged the same having been assessed by the Public Works Department of

Government of Jammu and Kashmir on courts directions, this plea cannot be raised later on, particularly when the Collector in his final award has stated that the assessment has been made with regard to land only excluding the structures.

23. Fourthly, it was argued that only example of small parcel of land had been taken to evaluate the market value of the landed property which was not permissible in view of the judgment of the Hon'ble Apex Court, the Reference Court has raised the rate of compensation from Rs.8.50 lacs per kanal to Rs.30.00 lacs per kanal and had based its opinion on the sale deed of the land measuring 06 marlas besides other oral evidence. The respondent's evidence before the Reference Court was not rebutted by the appellant or the Collector before the Reference Court, as both of them failed to lead any evidence to prove that the market value of the land in question was not as has been claimed or projected by the respondent. It is the basic principle of law that in view of the rival litigation, the fact proved by one party is required to be disproved by the other party by leading evidence. The appellant authority had failed to lead evidence before the Reference Court despite several opportunities and its evidence, on perusal of the minutes of proceedings, is found to have been closed on the submission of its counsel, not to lead any evidence.

24. Hon'ble Supreme Court in a case titled **Vithal Rao & Anr. Vs. Special Land Acquisition Officer** reported as (2017) 8 SCC 558 has been pleased to hold as to how the compensation has to be assessed in terms of Section 23 of the Land

Acquisition Act by explaining as to how the computation through comparative sales method, the sale instance to be of land nearby/adjacent to the acquired land and the sale to be proximate to date of acquisition and possessing similar advantages, being the factors, to be considered. It has been held in the said judgment that while determining the market value of large chunk of land, value of smaller piece of land can be taken into consideration after making proper deduction in value of lands and when sale deeds of larger parcel of land are not available, with further direction that the court should also take into consideration potentiality of acquired land apart from other relevant considerations. The Supreme Court has also recognized that courts can always apply reasonable amount of guesswork to balance equities in order to fix a just and fair market value in terms of parameters specified under Section-23 of the Land Acquisition Act.

25. The Reference Court in the case on hand had no other sale deed except sale deed of a smaller parcel of 06 marlas land, however, the land acquired in question was also not a big chunk of land but was just 06 kanals and 02 marlas situated at Sangam Bijbehara, the important junction on National Highway abutting on its both sides. The exemplar used by the Reference Court had proximity of both, time angle and situation angle, and has rightly justified its use to determine the market value of the acquired land, which was permissible in view of the law laid down by the Hon'ble Apex Court in the aforesaid judgment of (2017) 8 SCC 558 (supra).

26.In another judgment titled **Land Acquisition Officer Revenue Divisional Officer, Chittor Vs. L. Kamamma & Ors.** reported as **(1998) 2 SCC 385**, the Hon'ble Apex Court in Para-6 of the said judgment has observed that:-

“when no sales of comparable lands were available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough for roads, sewers, drains, expenses involved in formation of lay out lump sum payment as also the waiting period required for selling the sites required to be formed.”

27.The local Tehsildar during the acquisition proceedings had reported to the Collector that the market rate of the land was more than Rs.14.00 lac per kanal, however, the Collector slashed the same and fixed the market rate at Rs.8.50 lac per kanal without recording any reason therefor. The acquired land was situated prominently abutting the National Highway with commercial Units raised thereon, as such, its situational background could fetch more market value as compared to other lands situated in open lands of the villages.

28.Hon'ble Supreme Court in the judgment titled **State of Punjab Vs. Jagdish Rai & Ors.** reported as **(1977) 1 SCC 330** has observed in Para-9 of the judgment that:-

“Let us now deal with second set of the aforesaid eight appeals preferred by the State of Punjab. While doing so, it would be well to

recall that it is well established that in an appeal from an award granting compensation, this court should not interfere unless there is a wrong application of any well settled principle or unless there is something to show not merely that on the balance of evidence it is possible to reach a different conclusion but that the judgment cannot be supported by reason of a wrong application of a principle or because some important point affecting valuation has been overlooked or misapplied. Moreover, there is a prudent condition to which the appellate power, generally speaking, is subject. A court of appeal interferes not when the judgment under attack is not right but only when it is shown to be wrong.”

29. The respondent had been ordered to be paid compensation by enhancing the rate of the land to Rs.30.00 lac per kanal, which cannot be in any manner be called to be excessive or exorbitant given the fact that the land was situated on National Highway abutting both sides with commercial Units including the Petrol outlet thereon. The Reference Court has rightly granted the cost of the structures of 10 Units assessed by the Government agency-Public Works Department, cost of shifting of the Units including Petrol outlet assessed by the Indian Oil Corporation and also damages suffered by the respondent-land owner for two years till he could set up his Units at some alternate space.
30. Hon'ble Apex Court in the judgment titled **Mahesh Dattatry Thirthkar Vs. State of Maharashtra** reported as (2009) 11 SCC 141 has observed in para 39:-

“it is a well established proposition of law that the burden of proving the true market value fo the acquired property is on the state that has acquired it for a particular purpose...”

Once this principle (supra) is applied to the present case the appeal is not maintainable because neither the indenting department nor the Collector have been able to prove the true market value of the acquired property before the Reference Court.

31. In view of these propositions of law it can be safely said that there is not any legal infirmity or anomaly in the impugned judgment if the Reference Court has relied on land transactions of small patch of land.

32. So far as the contention of learned counsel for respondent is concerned that the appeal is not maintainable as the appellant has failed to apply for leave to the court to file appeal, the Constitutional Bench of the Hon’ble Apex Court in a case titled **U.P Awas Evam Vikas Parishad Vs. Gyan Devi & Ors.** reported as **(1995) 2 SCC 326** interpreting Section 50(2) of the Central Land Acquisition Act, which is *pari materia* to Section 48(2) of the local J&K Land Acquisition Act, has held that in the event of enhancement of the amount of compensation by the Reference Court, if the Government does not file appeal the local authority or the Company can file the appeal against the award in the High Court after obtaining leave of the court under the scheme of Land Acquisition Act. The indenting department after passing of the award by the Collector has even no right seeking for the Reference, however, it reserves its right to oppose the claim for enhancement of rate of compensation

by the land owners. Para 24 of the judgment which is relevant is extracted as under:-

“24. To sum up, our conclusions are :

1. [Section 50\(2\)](#) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.

2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.

3. The proviso to [Section 50\(2\)](#) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under [Article 226](#) of the Constitution as well as the remedies available under the [L.A. Act](#).

4. In the event of denial of the right conferred by [Section 50\(2\)](#) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under [Article 226](#) of the Constitution.

5. Even when notice has been served on the local authority the remedy under [Article 226](#) of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

6. *The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.*

7. *In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.*

8. *In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court the local authority should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.*

9. *Since a company for whom land is being acquired has the same right as a local authority under [Section 50\(2\)](#), whatever has been said with regard to a local authority would apply to a company too.*

10. *The matters which stand finally concluded will, however, not be reopened.”*

33. It is an admitted fact that the State (now UT) of J&K has not filed any appeal against the impugned judgment/award passed by the reference court, enhancing the compensation in favour of the respondent no. 1/property owner, the appellant (NHAI) as indenting company/authority, in view of the law laid down by the Apex Court in **(1995) 2 SCC 326**, could file the appeal

after craving leave of this court. The appellant, however, has not laid any motion in that behalf and in absence of leave, the appeal on hand is not competent as such, not maintainable.

34. In the case on hand, the National Highway Authority of India, which is a 'body Corporate' or in other words the 'Company', has filed the appeal without seeking leave of the court in view of the clear ruling on the subject by a Constitution Bench of the Hon'ble Supreme Court, the appeal filed by the appellant, thus, cannot be termed to be competent being precluded in terms of Section 48(2) of J&K Land acquisition Act and is liable to be dismissed on this count only.

35. The Appeal on hand, for the aforesaid reasons, fails on both the counts, firstly being incompetent without seeking leave of the court, in terms of Section 48(2) of the J&K Land Acquisition Act and also on merits. Impugned order passed by the Reference Court is, thus, upheld, as a result the appeal is **dismissed** with no orders as to costs. Decree-sheet shall be drawn accordingly. The amount of compensation deposited during the pendency of the appeal before this Court is ordered to be remitted along-with interest, if any, to the Reference Court for making payment in accordance with decree. Trial Court record be sent down, with a copy of this judgment for information and compliance.

(MD. AKRAM CHOWDHARY)
JUDGE

Srinagar
25.08.2022
Muzammil. Q

Whether the order is reportable: Yes