

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

Reserved on: 30.11.2022  
Pronounced on: 02.12.2022

OWP No. 816/2012

Bashir Ahmad Bhat and Others ...Petitioner(s)

Through:- Mr. M.A. Qayoom, Advocate

V/s

State and Others ...Respondent(s)

Through:- Mr. Hilal Ahmad Wani, AAG.

**Coram:**

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**

**HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE**

**JUDGMENT**

**Per Sanjeev Kumar-J:**

1. The petitioners claim that they are owners in possession of land measuring 4 kanals and 5 marlas covered by Survey no. 1968/1066 min, situated in Estate Nowhatta [Kathi Darwaza] Rainawari, Srinagar. Out of the said land, a piece of land measuring 2 kanals and 15 marlas was sought to be acquired by the Collector Land Acquisition [Additional Deputy Commissioner], Srinagar, under the provisions of Jammu and Kashmir Land Acquisition Act, Svt. 1990 [“ the Act of 1990”]. A notification under Section 4(1) was issued by the Collector Land Acquisition, vide no. DCS/LAC/1896/63-77 dated 20<sup>th</sup> April, 2011. The subject land was sought to be acquired for public purposes, namely “for widening of lawn of the Evacuee Property Complex at Kathidarwaza, Rainawari in Estate

Nowhatta" Srinagar. The notification under Section 4 (1) of the Act of 1990 was in respect of total land measuring 4 kanals and 10 marlas, out of which land measuring 2 kanals and 15 marlas was the land owned and possessed by the petitioners. It is contended by the petitioners that no proper publication of the Section 4(1) notification was issued, and, as such, the petitioners were deprived of an opportunity to oppose the acquisition, and the notice issued under Section 4(1) of the Act of 1990. The Section 4(1) notification was followed by a declaration issued by the District Collector, Srinagar, under Section 6 of the Act of 1990 vide Notification no. 25/DCS of 2011. The declaration was to the effect that the District Collector, Srinagar, was satisfied after considering the report of the Collector Land Acquisition, Srinagar, that the subject land was required for public purpose i.e., "for widening of lawn of the Evacuee Property Complex at Kathidarwaza, Rainawari in Estate Nowhatta" Srinagar. As a matter of fact the Government in the Revenue Department also invoked Section 17 of the Act of 1990, directing the Collector Land Acquisition, Srinagar, to take over the possession of the aforesaid land required for public purpose subject to fulfillment of conditions prescribed under Section 9 (2) and 17-A of the Act of 1990.

2. It may be noted that simultaneously with the proceedings initiated in terms of Section 4(1) notification issued on 20<sup>th</sup> April, 2011, for acquiring the land "for widening of lawn of the Evacuee Property Complex at Kathidarwaza, Rainawari in Estate Nowhatta" Srinagar, the Collector Land Acquisition, Srinagar, issued another notification in the exercise of powers

conferred by Section 4(1) of the Act of 1990 for acquiring the land measuring 1 kanals, 10 marlas and 257 Sfts. falling in khasra no. 1968/1066. This was also the piece of land belonging to the petitioners. This notification was issued by the Collector Land Acquisition, Srinagar, on 25<sup>th</sup> April, 2011, and the public purpose specified in the notification for acquiring the land was indicated as “widening of road” at Saidakadal, Srinagar. This notice was later on withdrawn and, therefore, there is no controversy qua the Section 4(1) notification dated 25<sup>th</sup> April, 2011.

3. The petitioners when came to know that their land was being acquired by the respondents not for any public purpose, but on account of *mala fide* intentions of the then Collector Land Acquisition, to deprive the petitioners of their land, they filed the instant petition. The notification under section 4 and 6 have been assailed in this petition, *inter alia*, on the following grounds:-

- i) That section 4(1) notification dated 20<sup>th</sup> April, 2011, insofar as, it pertains to the acquisition of land belonging to the petitioners, is not sustainable on the ground that the said land is not needed by the respondents for any public purpose. It is submitted that the land required “for widening of lawn of the Evacuee Property Complex at Kathidarwaza, Rainawari in Estate Nowhatta” Srinagar, cannot be said to be for public purpose. The Department of Custodian, which administers the immovable properties of Evacuees, is not an authority competent to acquire the land for augmentation of the value of

the Evacuees property, nor such acquisition can be termed as acquisition for public purposes.

- ii) That there has been no publication of the notification under Section 4(1) of the Act of 1990 as per the mandate of the Section. Neither the notice was published in two daily newspapers having wide circulation in the concerned locality, out of which at least one should be in regional language, nor the public notice was affixed at the convenient places in the concerned locality and, therefore, the petitioners had no opportunity to oppose the acquisition.
- iii) That for issuance of declaration under Section 6 of the Act of 1990 recording of satisfaction by the Government is *sine qua non*. It is submitted that in the instant case Section 6 notification was issued by the District Collector, Srinagar, purportedly in the exercise of powers delegated to him under SRO-235 dated 11<sup>th</sup> August, 2009. It is contended that the District Collector, who may have been authorized to issue declaration under Section 6 and 7, was not and could not have been delegated the powers of the Government to record satisfaction that the subject land was needed for public purposes.

4. Writ petition is opposed by the respondents. Though there are serious allegations of *mala fide* made by the petitioners against the then Collector Land Acquisition, who is also arrayed as party respondent no. 7,

by name, yet, despite notice and service, respondent no. 7 has chosen not to rebut the allegations by filing any reply affidavit. The other respondents who have filed their objections submit that a notification under Section 4(1) of the Act of 1990 was issued and the same was duly published, however, the petitioners did not file any objections. The matter was thus processed and the District Collector, Srinagar, pursuant to the delegation made by the Government, issued a notification under Section 6 and 7 of the Act of 1990, and directed the Collector Land Acquisition, to take up the acquisition proceedings for acquiring the subject land.

5. In view of the urgency expressed by the indenting department, the matter was taken up with the Government through Divisional Commissioner, Kashmir, for invoking the urgency provisions. Accordingly, the Government issued a notification under Section 17 of the Act of 1990, and directed the Collector Land Acquisition, to take possession of the subject land subject to fulfillment of requisite conditions laid down in Section 17-A of the Act of 1990. The respondents, however, submitted that the indenting department i.e. the Evacuees Department showed its disinclination to acquire the land subject matter of Section 4 (1) notification issued on 25<sup>th</sup> April, 2011 for "widening of road" at Saidakadal, Srinagar and, accordingly, the aforesaid notification was withdrawn. In respect of the land which is subject matter of the acquisition in terms of Section 4(1) notification issued on 20<sup>th</sup> April, 2011, it is submitted that the land is needed "for widening of lawn of the Evacuee Property Complex at Kathidarwaza, Rainawari in Estate Nowhatta"

Srinagar, but the process of acquisition could not be completed due to the pendency of this petition and the intervention made by this Court vide order dated 2<sup>nd</sup> July, 2012, directing the respondents to maintain status quo with respect to the land in question.

6. Having heard learned counsel for the parties and perused the material on record, we are of the view that Section 4(1) notification issued by the Collector Land Acquisition on 20<sup>th</sup> April, 2011, and the declaration issued by the District Collector, Srinagar, dated 10<sup>th</sup> October, 2011, under Section 6 and 7 of the Act of 1990 are not sustainable for more than one reasons. Section 4(1) of the Act of 1990, deals with the publication of the preliminary notification and powers of officers thereupon. The Sub-Section 1 of Section 4, which is relevant for our purpose is set out below:-

**“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 know by beat of drum and through the local Panchayats and Patwaries;[xxx]*
- (b) *In two daily newspapers having largest circulation in the said locality of which at least one shall be in the regional language.*

7. From reading of Sub Section 1 of Section 4 reproduced above, it is crystal clear that whenever the land in any locality is needed or likely to be needed for public purpose, the Collector Land Acquisition, shall notify it through a public notice to be affixed at convenient places in the said locality and shall also cause it to be known

(a) *“by beat of drum and through the local Panchayats and Patwaris;”*

(b) *In two daily newspapers having the largest circulation in the said locality, and one of such newspapers at least shall be in the regional language.*

The petitioners have specifically contended that no such publication in any newspaper in the regional language was ever published, nor was any public notice affixed at convenient places in the locality concerned. There is no specific denial of the averments made by the petitioners in the petition, nor any record was shown to us, where from we could find out the compliance of clause (a) and (b) of Sub-Section 1 of Section 4 of the Act of 1990.

8. The Division Bench of this Court has already considered the matter in the case titled as *“Muzaffar Ahmed Beigh and Others Vs. State of J&K and Others, 2021 (6) JKJ20 [HC]*. The Division Bench of this Court, after surveying the case law on the point concluded in Para 30 and 31, held as under:-

30. *In “Bansi Lal Bhat V. State of Jammu and Kashmir and Others, 2012 (4) JKJ 272[HC], a Division Bench of this court while considering the requirements of Section 4 of the Act laid down that the publication of the notification in official gazette, in two local daily newspapers, one of which shall be in regional language and publication of the substance of the newspaper in the locality is mandatory and, if any of them is not complied with, the acquisition would be improper and liable to be quashed.*

31. *In view of the above discussion vis-à-vis the facts and circumstances of this case, as the notification issued under Section 4 of the Act was not published in all the*

*prescribed modes, the said notification is non-east and invalid in the eyes of law.*

9. Insofar as the contention of Mr. M.A. Qayoom, the learned counsel for the petitioners, in respect of Section 6 declaration, is concerned, we are of the view that the issue raised before us is no longer *res-integra*. It is true that declaration under Section 6 to the effect of land needed for public purpose can be made under the signature of the Revenue Minister or some other officer(s) duly authorized on his behalf. It is equally true that in the exercise of powers conferred under Sub-Section 1 of Section 6, the Government has authorized Financial Commissioner (Revenue), Divisional Commissioners and Deputy Commissioners within their pecuniary jurisdiction to exercise the powers conferred by Section 6 and 7 of the Act of 1990. The issuance of declaration by the District Collector, Srinagar, in terms of its notification no. 25/DCS of 2011 dated 10.10.2011, cannot be found fault with as the same is within the jurisdiction and competence of Deputy Commissioner (District Collector), Srinagar. However, the satisfaction that any particular land is needed for public purpose is to be recorded by the Government and Section 6 or for that matter, any other provision of the Act of 1990, does not permit delegation of such power by the Government to any other authority or officer. This has been so authoritatively held by a Division Bench of this Court in the case titled as **“Virender Pandoh Vs. State of J&K and Others” 2021 (6) JKJ 1[HC]**. What is held by the Division Bench is summed up in Para 17, which for facility of reference is reproduced as under:-

*17. In view of the aforesaid SRO, the Deputy Commissioner has been delegated with the power of the*

*Revenue Minister to make a declaration under Section 6(1) of the Act but the power exercisable by the government for recording satisfaction as to whether the land is needed for public purpose or not has not been delegated obviously as it is not delegable. The satisfaction in this regard has to be of the Government. The record produced before us does not contain any document which records the satisfaction of the Government in this regard.*

10. Obviously, the District Collector, Srinagar, is not the Government either under Jammu and Kashmir General Clauses Act, Svt. 1997, nor could it be so construed in terms of the business Rules framed by the Government under Section 43 of the Constitution of Jammu and Kashmir, as it was applicable at the relevant point of time. Without going much deeper into the issue, suffice is to say that the Deputy Commissioner/District Collector is neither the Government nor the authority competent to record the satisfaction as to whether a particular land is needed for public purpose or not.

11. Mr. Hilal Ahmad Wani, learned AAG appearing for the respondents could not bring to our notice anything in the record which would demonstrate that the Government had applied its mind and recorded its satisfaction that the land was required for public purpose. Following the dictum of law laid down by the Division Bench in the case titled as ***“Virender Pandoh Vs. State of J&K and Others” 2021 (6) JKJ 1[HC]***, and having regard to the unequivocal provisions of Sub-Section 1 of Section 6, we have no doubt in our mind that Section 6 notification issued by the District Collector, Srinagar is vitiated, having been issued without there being any satisfaction recorded by the Government that the land was required for public purpose.

12. In view of the above, we would not like to go into the third point raised by Mr. M.A. Qayoom, learned counsel for the petitioners, that widening of lawn of the Evacuee Property in the custody of Custodian General is a public purpose work for which Custodian General is entitled to acquire the land. We leave it open to be determined as and when it is raised, and is thought by this Court necessary to be determined.

13. For the foregoing reasons, we find merit in this petition, and the same is, accordingly allowed. The impugned Section 4(1) notification dated 20<sup>th</sup> April, 2011 and Section 6 and 7 notification issued by the District Collector, Srinagar vide order dated 10.10.2011 are quashed. All subsequent proceedings for acquisition undertaken by the respondents are also declared *non-est* in the eye of law, and therefore quashed. The quashing of the acquisition proceedings initiated under the 1990 Act by this order shall not come in the way of the respondents to acquire the subject land, if the same is needed for the public purpose by following strictly the provisions of Jammu and Kashmir Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013; which is in force as on date.

**(Moksha Khajuria Kazmi)**  
**Judge**

**(Sanjeev Kumar)**  
**Judge**

SRINAGAR:  
02 .12.2022  
Mir Arif

Whether the order is reportable : Yes  
Whether the order is speaking : Yes