

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

OWP No. 492/2014

Reserved on : 10.08.2023

Announced on : 17.08.2023

Vinod Kumar and others

....Petitioner/Appellant(s)

Through :- Mr. Anirudh Sharma, Advocate

V/s

State of J&K and others

....Respondent(s)

Through :-

Ms. Sagira Jaffer, Advocate vice

Mrs. Monika Kohli, Sr. AAG

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

JUDGMENT

Prayer:-

1. The petitioners through the medium of the present petition, are seeking writ in the nature of mandamus against the respondents to pay compensation to the petitioners for their respective shares in Shamlat Deh land in town Basohli which according to the petitioners has submerged on account of construction of the Ranjit Sagar Dam. The petitioners have further sought direction against the respondents to pay interest @ 12 % per annum to the petitioners on the amount of compensation, illegally withheld by the respondents, which was payable to the petitioners for their respective shares in the aforesaid land with effect from the date of assessment of compensation for the acquisition of the same till its actual disbursement to the petitioners.

Arguments on behalf of petitioners:-

2. The short submission which has been advanced by the petitioners is that the petitioners, who are the legal heirs of Sh. Prem Nath, Sh. Amir Chand and Sh. Amar Nath, were having their residential houses and other immovable property in Basohli town of Tehsil Basohli, District Kathua.
3. Further case of the petitioners is that the land as well as the residential houses of the petitioners came under acquisition on account of construction of Ranjit Sagar Dam Project also known as Thein Dam Project, which according to the petitioners was being constructed by the State of Punjab. Further case of the petitioners is that they were co-shares in unpartitioned Shamlat Deh land of town Basohli and were holding rights therein proportionate to the lands held by them as owners and the same also got submerged on account of the construction of the aforesaid Dam. The petitioners in the writ petition have relied upon an agreement dated 20.01.1979, which has been placed on record as annexure-A which *inter alia* provides that various terms and conditions and covenants agreed upon by the erstwhile State of Jammu and Kashmir and State of Punjab pertaining to the various modalities for construction of Ranjit Sagar Dam.
4. Learned counsel for the petitioners has placed reliance upon Clause 2 of the said agreement which provides that all lands for the construction of the project would be acquired at the cost of project in accordance with the relevant law in force in the concerned State. Learned counsel further submits that the title of the land acquired for the aforesaid project in the erstwhile State of Jammu and Kashmir shall, however, vest in the Union Territory of Jammu and Kashmir, who shall make available the land so acquired to the Thein Dam

Project on lease hold basis in accordance with the rules which were prevalent in the erstwhile State of Jammu and Kashmir. Learned counsel for the petitioners have further placed reliance upon clause 2 of the aforesaid agreement which clearly and unambiguously provides that the compensation paid, shall be deemed to be the premium for the lease renewable as and when required during the life time of the project.

5. Learned counsel for the petitioners further submits that the entire cost of the compensation payable under law and the cost of the rehabilitation was required to be debited to Their Dam Project and the agreement between two States further provide that the payment of the due compensation and rehabilitation package with a view to better the prospects of villages, families, persons, houses, shops, cultivated land, un-cultivated areas, which was likely to be affected by the construction of the said Project.

6. The further case of the petitioners is that in pursuant to the aforesaid agreement executed between the two States, the Hydro Electricity Project was given green signal and the construction activities commenced and, accordingly, an indent placed for the acquisition of land measuring 10028 kanals and 10 marlas comprised in different khasra numbers situated in different villages of Tehsil Basohli including town Basohli. The further case of the petitioners is that pursuant to the indent placed by the aforesaid authority for acquisition of land in question, the respondent No. 2 initiated the proceedings under the Land Acquisition Act for computing the just compensation payable to the affected persons and consequently, different awards were passed for different villages including town Basohli.

7. It has been brought to the notice of the Court that an award was passed in the year 1997 for payment of compensation regarding the land and the residential houses of the petitioners possession of which were taken over by the Collector Land Acquisition and same were placed at the disposal of Ranjit Sagar Dam Authorities in the State of Punjab. The petitioners had admitted that insofar as the compensation for the ownership lands and the houses of the petitioners that came under the acquisition is concerned, the same was paid to the petitioners but insofar as the claim of the petitioners with respect to the compensation for their respective shares of Shamlat Deh land in town Basohli is concerned, which has submerged on account of the construction of the dam, the same has not been paid and thus, the instant writ petition has been preferred. Learned counsel for the petitioners has placed on record the copy of the report which has been prepared by the Naib Tehsildar, Basohli quantifying the respective portions of the said land held by the petitioners as per their entitlement.

8. Learned counsel further submits that although the petitioners have been repeatedly visiting the office of the respondent No. 2 for getting the compensation to the extent of their respective shares of Shamlat Deh land in town Basohli, which got submerged in the construction of the aforesaid Dam as per their entitlement, the same has not been released and feeling aggrieved of the same, the petitioners have filed the instant petition.

9. Learned counsel further submits that the non-payment of the compensation by the respondents is in flagrant violation of the constitutional right guaranteed under the Constitution of India.

10. Learned counsel further submits that the respondents at no stage have ever disputed the claim of the petitioners with regard to their claim of the compensation in respect of their shares in Shamlat Deh land in town Basohli which got submerged and he further submits that although the award was passed way back in 1999 and the possession was taken over simultaneously, yet the compensation which has been assessed has not been released in favour of the petitioners and, thus, petitioners are entitled to claim interest on the said claim as well.

Arguments on behalf of respondents:-

11. *Per contra*, the reply has been filed by the respondents in which the respondents have not disputed the claim of the petitioners with regard to entitlement for receiving the compensation in question but the only plea which has been projected by the respondents is that the payment of compensation could not be materialized due to the non-availability of the requisite funds from the State of Punjab and Thein Dam Project Authority, who have been requested on various occasions to make the payment so that the claim of the petitioners is redressed.

12. Besides, the respondents have taken a specific stand in para 2 of the reply that in terms of bilateral agreement between the erstwhile Jammu and Kashmir and State of Punjab duly executed on 20.01.1979, it is the exclusive liability of the State of Punjab and the Thein Dam Project to pay the compensation of the land in question. The respondents while filing the reply have taken a specific stand that despite number of requests to the State of Punjab and the Chief Engineer concerned, the compensation in respect of the land owners has not been reimbursed and the respondents with a view to substantiate their

claim has also placed on record the latest communication issued in this regard and marked as annexure R1. The further stand of the respondents is that the erstwhile State of J&K and Collector Land Acquisition have acquired the said land in pursuance to the bilateral agreement where expressly the liability to bear/pay compensation has been accepted by the State of Punjab.

13. Heard learned counsel for the parties at length and perused the record.

14. With the consent of the learned counsel for the parties, the present petition is taken up for final disposal at this stage.

Legal Analysis:-

15. The issue whether the compensation is being paid by the erstwhile State of Jammu and Kashmir or by the State of Punjab is no more res-integra and the same has already been clinched by the Co-ordinate Bench of this Court in OWP No. 547/2002 along with clubbed petition decided on 27.05.2009 involving similar questions of fact and law which is subject matter in the instant petition.

16. Accordingly, a Co-ordinate Bench of this Court has directed the respondent Nos. 1 and 2 to pay the amount assessed by the Government, to the petitioners within stipulated period along with interest at the rate of 6% per annum from the date the amount was due to them till it is actually paid, with the rider that the State Government will be within its right to recover the same from the State of Punjab in terms of the provisions of the agreement executed way back in the year 1979.

17. The writ petition was allowed in favour of the claimants by holding that the petitioners were entitled to the rehabilitation amount from the erstwhile State of Jammu and Kashmir as the process of the acquisition was done by the

State Government and the amount was also required to be paid by the concerned Collector to those persons, who were entitled for such compensation. Since, the rehabilitation package was a part of compensation and agreement executed, which was required to be paid by the State Government to the lawful claimants on behalf of the State of Punjab. Since the liability to pay the amount to the petitioners was that of the Collector and the State Government and, accordingly, it was held in the aforesaid case that the petitioners therein cannot be permitted to wait till the final settlement was arrived at between the Punjab Government and the State Government by observing that any liability raised by the said Government for making payment on account of compensation will ultimately have to be reimbursed by the Government of Punjab.

18. The Court while deciding the petition was of the view that since petitioners have no role to play as it is a bilateral agreement between the erstwhile State of Jammu and Kashmir and the State of Punjab and the parties to the agreement cannot violate the provisions of the agreement as the petitioners have no privity of contract with the State of Punjab and this aspect of the matter weighed heavily with the Co-ordinate Bench of this Court and the petition was allowed by directing the respondent No. 1 to pay the said compensation.

19. Learned counsel for the petitioners submit that case of the petitioners is fully covered by the judgment passed by a Co-ordinate Bench mentioned (*supra*) and, accordingly, the petitioners are entitled for the said compensation by the erstwhile State of Jammu and Kashmir.

20. Learned counsel also relied upon another judgment passed by this Court in OWP No. 367/2014 decided on 22.05.2015 in case titled Gulam Hussain and ors. vs. State and others involving similar facts and position of law, whereby, it has been held that once the land has been acquired by the State Government then it is the primarily duty of the State Government to pay compensation whatever is due to the petitioners as the Government of Punjab had no role in the aforesaid matter. In the light of the aforesaid, the said writ petition was disposed of with the direction to the respondents to pay compensation as assessed under the rules along with statutory interest permissible under rules.

21. Learned counsel for the petitioners has also relied upon another order passed by this Court in OWP No. 1173/2014, decided on 27.09.2021 in case titled Ram Raj and another vs. State and others wherein, the stand was taken by the respondents that the amount of compensation could not be released in favour of the lawful claimants on the ground that the DDO powers have been frozen in the aforesaid case as according to the respondents the post of Collector, Thein Dam Project, Basohli stood abolished. In the aforesaid case, although the claimants were entitled for the compensation in the year 1997 and for one reason or the other, they were deprived of the said compensation and the issue was delayed and, accordingly, the Division Bench of this Court directed the concerned Additional Deputy Commissioner, Basohli to release the amount strictly as per the award in favour of the petitioners after determining their entitlement, notwithstanding the fact that no formal DDO's powers had been conferred upon the said officer. On the similar analogy, the respondents are also under legal obligation qua the petitioners to release the compensation in their favour.

22. It is admitted case of the parties that the petitioners' propriety land was acquired by the erstwhile State Government of Jammu and Kashmir in connection with the construction of Ranjit Sagar Dam and the petitioners are waiting for disbursement of compensation due to them on account of such acquisition. The respondents cannot deny to pay the compensation to the petitioners, once the land has been acquired by the respondents. It is primarily their obligation to pay compensation whatever is due to the petitioners.

23. From a bare perusal of the judgment passed by the Division Bench and Co-ordinate Bench of the Court, it is manifestly clear that the liability to pay the amount to the petitioners is of the Collector and the State Government and the petitioners by no stretch of imagination can be permitted to wait till the final settlement is made at between the Punjab Government and the State Government. There is no denying the fact that the process of acquisition was done by the State Government and the amount was payable by the concerned Collector to the petitioners who were entitled for compensation and insofar as the rehabilitation package which is part of the compensation as per the agreement was to be payable by the State Government to the petitioners for and on behalf of the State of Punjab. Since there is a bilateral agreement between the State of Punjab and the erstwhile State of Jammu and Kashmir and the parties to the agreement cannot be allowed to perpetuate the illegality by violating the provisions of the agreement and, accordingly, a duty is cast upon the respondent Nos. 1 and 2 herein to pay the compensation to the petitioners as there is no privity of contract by the petitioners with the State of Punjab. Since there is no privity of contract by the petitioners with the State of Punjab and admittedly the petitioners have no role to play, therefore, the

respondents are under legal obligation qua the petitioners to pay the compensation to the petitioners for their respective shares in the land in question. Thus, the stand of the respondents that since the project has been created by the State of Punjab and the said State has accepted their liability for the said land acquired and, accordingly, any relief which can be claimed by the petitioners to be against the State of Punjab and authorities of Their Dam Project, has no legal basis and is liable to be rejected in the light of the law laid down by the Division Bench of this Court which has been accepted by the respondents gladly and voluntarily in identical matters. Thus, on the ground of parity, the petitioners are also entitled for the same relief as the petitioners by no stretch of imagination can be discriminated viz a viz similarly situated persons. Thus the stand taken by the respondents is not legally sustainable in the light of the decision already taken by this Court in identical matters which has been accepted by the erstwhile State of Jammu and Kashmir and now the Union Territory without any demur accordingly, I hold that the petitioners are entitled for the compensation and also the interest for delayed payment.

Conclusion:-

24. In view of the above facts and circumstances, the present writ petition is allowed and disposed of with a direction to the respondents to pay compensation to the petitioners for their respective shares in Shamlat Deh Land in town Basohli submerged on account of construction of Ranjit Sagar Dam as assessed under rules and due to the petitioners along with statutory interest at the rate of 6% per annum on the amount of compensation illegally withheld by the respondents which was payable to the petitioners for their respective shares in Shamlat Deh Land in town Basohli submerged on account of construction of

Ranjit Sagar Dam with effect from the date of assessment of compensation for the acquisition of the same till its actual disbursement to the petitioners preferably within eight weeks from the date copy of this order is provided to the respondents.

25. Disposed of in the manner indicated above.

(Wasim Sadiq Nargal)
Judge

Jammu:
17.08.2023
Meenakshi

Whether the order is speaking? Yes/No
Whether the order is reportable? Yes/No

