

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

CJ Court

Reserved on: 29.06.2022

Pronounced on: 30.08.2022

WP(C) No.1861/2021

Aijaz Ahmad Wawa

... Appellants.

Through: Mr. Mohammad Ashraf Bhat, Advocate.

Vs.

UT of J&K and others.

....Respondent(s)

Through: Mr. M. A. Chashoo, AAG.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

J U D G M E N T

Pankaj Mithal, CJ,

1. Heard Mr. Mohammad Ashraf Bhat, learned counsel for the petitioner and Mr. M. A. Chashoo, learned AAG, for the respondents.
2. The petitioner alleges that he is the recorded owner in possession of land measuring 8 kanals 4 marlas and 131 Sqft falling under khasra nos. 433 (12 marlas), 434 (3 marlas 240 Sqft), 435 (16 marlas), 436 (12 marlas), 437 (4 marlas), 438 (17 marlas 90 Sqft) and 439 (18 marlas 135 Sqft).
3. The petitioner has preferred this writ petition for quashing of the entire land acquisition proceedings initiated by the respondents in terms of the repealed Jammu & Kashmir Land Acquisition Act, 1990, and for issuance of mandamus commanding the respondents to initiate fresh proceedings for acquisition of the said land in accordance with the ***Right to***

Fair Compensation and Transparency in Land Acquisition, Rehabilitation and resettlement Act, 2013.

4. The petitioner in the entire writ petition has nowhere pleaded as to when his land was notified to be acquired under Section 4 of the Jammu & Kashmir Land Acquisition Act, when a declaration under Section 6 of the Act in respect thereof was issued and as to whether the provisions of Section 17 of the Act were invoked and whether the possession of the land was taken over and if any award has been passed. In the absence of such specific pleadings it is next to impossible to decide if the proceedings have lapsed. However, from the reply filed by the respondents 1, 2 and 3 and the record produced by Mr. M. A. Chashoo, learned AAG, the relevant facts stand revealed.

5. The Government of India under the Prime Ministers Development Package (PMDP) 2015, approved the construction of two semi-ring roads around the capital cities of Jammu and Srinagar. Accordingly, for construction of the said ring roads which are not the National Highways, the work of construction was entrusted to the National Highway Authority of India. Therefore, on the indent of the National Highway Authority of India, the respective District Development Commissioners were required to initiate the proceedings for acquiring the land for purposes of construction of the above ring roads.

6. In furtherance of the above, land measuring 165 Kanals, 8 Marlas and 140 Sqft of village Budgam, which may include the land of the petitioner, was notified to be acquired under Section 4 of the Act vide notification dated 22.05.2017 which was followed by a declaration under

Section 6 of the Act dated 27.07.2017. In issuing the declaration aforesaid the provisions of Section 17 of the Act were also invoked and it was provided that the Collector will take possession of the aforesaid land on expiry of 15 days from the date of notice under Section 9(2) of the Act. Consequently, the possession of the land was taken over by the Tehsildar/ Naib Tehsildar and was handed over to the National Highway Authority of India on 08.09.2018. Thus, the acquisition was completed and the land came to be vested in the State free from all encumbrances and stood entrusted to the National Highway Authority of India for purposes of construction of semi ring road under the Prime Ministers Development Package, 2015. The final award was passed in August, 2020.

7. All the above documents including the notification issued under Sections 4 and 6 read with Section 17, possession memo and the final award are all part of the record as produced by Mr. M. A. Chashoo, learned AAG.

8. In the reply of respondents 1, 2 and 3, it has been stated that for purposes of construction of the ring road, land of 45 villages of District Budgam was notified to be acquired in April, 2017 and was finally acquired vide notification dated 27.07.2017. The final award was pronounced on 27.08.2020. It is also stated that in exercise of powers under Section 17 of the Act, possession was taken over and as such, the proceedings do not stand lapsed as stated by virtue of Section 11-B of the Act.

9. It is clear from the record as well as the objections/ reply filed by respondents 1, 2 and 3 that the land was notified to be acquired in April,

2017 and it was finally acquired vide notification dated 27.07.2017 much before the Act was repealed. It may be noted that even the possession of the land was taken over on 08.09.2018 and the land came to be vested in the State free from all encumbrances before the Act was repealed by the Jammu & Kashmir Re-organization Act, 2019.

10. In view of the aforesaid facts and circumstances when the land had been acquired and stood vested with the State, it cannot be divested otherwise than by following the procedure that may be prescribed in law or the Act itself.

11. The only contention raised on behalf of the petitioner is that the land acquisition proceedings have lapsed under Section 11 of the Act which probably refers to Section 11-B of the Act as no award was made within two years of the declaration issued under Section 6 of the Act or as no award was made till the repeal of the Act.

12. Section 11-B of the Act reads as under:

“[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.”

13. A plain reading of the aforesaid provision provides that proceedings of acquisition lapses if the award is not made within two years from the date of declaration under Section 6 of the Act.

14. The petitioner has not pleaded the exact date of issuance of declaration under Section 6 of the Act and at the same time has concealed the fact of passing of the award dated 27.08.2020. In the absence of crucial date for deciding the issue of lapsing of the proceedings, the court is not obliged to consider the above aspect. However, the record as well as the reply of the respondents reveal that declaration under Section 6 of the Act was made on 27.07.2017 and the land came to be vested in the State on 08.09.2018 with the transfer of the possession i.e., within two years stipulated under Section 11-B of the Act and before the repeal of the Act. Therefore, in view of the decision of the Supreme Court in *Satendra Prasad Jain and Others v. State Of U.P. and Others : AIR 1993 SC 2517* the land acquisition proceedings would not stand lapsed as the provision providing for the lapsing of the proceedings would not apply where urgency provisions are invoked and the possession is taken over. Even the repeal of the Act would not affect the vesting of the land as the repeal is subsequent to vesting.

15. In this connection reference may also be had to a Division Bench judgment of this court dated 23.12.2021 passed in OWP No.1634 of 2016 : Sheikh Reyaz Hamid and others v. State of J&K and others (of which one of us i.e., Hon'ble the Chief Justice was the author). In the said case it was observed that Section 11-A of the Land Acquisition Act is pari materia with Section 11-B of the Act and would not apply where urgency

provisions of Section 17 are invoked provided possession of the land is taken over within two years and the vesting gets completed.

16. In view of the aforesaid facts and circumstances, we are of the opinion that the aforesaid land acquisition proceedings have not lapsed by virtue of Section 11-B of the Act as the vesting stood completed within two years though the award was made later on. Secondly, the repeal of the Act was much later and has no effect on the acquisition proceedings and the vesting of the land.

17. There is no challenge to the award before us. In the event, the petitioner is not satisfied by the compensation offered under the award, he may take recourse to the proceedings of reference under Section 18 of the Act or may approach the appropriate forum as may be advised so as to challenge the award on any ground that may be available to him under law.

18. The writ petition is, accordingly, dismissed in the aforesaid terms.

19. Record produced by Mr. M. A. Chashoo, learned AAG, is directed to be returned to him.

(JAVED IQBAL WANI)
JUDGE

(PANKAJ MITHAL)
CHIEF JUSTICE

Srinagar
30.08.2022
Abdul Qayoom, Secy.

Whether the judgment is reportable?

Yes.