

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 31.03.2023

Pronounced on: 28.04.2023

OWP No.424/2018

CM No.1009/2023

c/w

APOWP No.11/2018

CM No.2932/2020

OWP No.617/2018

IA Nos.1/2018 & 2/2018

Land Owners of Village Suthsoo and others ...Petitioner(s)

Through:- Mr. M.Y.Bhat, Sr. Advocate with
Mr. Farooq Ahmad Khan, Advocate

V/s

State of J&K and others

...Respondent(s)

Through:- Ms. Asifa Padroo, AAG
Mr. Mohsin Qadri, Sr. Advocate with
Ms. Maha Majid, Advocate
Mr. A.P.Singh, Advocate
Mr. Rabinder Singh, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

Sanjeev Kumar-J

1. The land owners of in as many as twenty villages, whose land has come under acquisition for construction of "semi ring road" being constructed by the National Highway Authority of India ["NHAI"] from Pampore to Sonawari are before this Court in these two writ petitions.

2. The ring road undertaken by the NHAI for construction would pass through districts of Srinagar, Budgam, Pulwama and Bandipora. The

Government of India has entrusted the job of constructing the ring road to NHAI. With a view to acquiring private land of the land owners in the aforesaid districts for laying down the ring road, the NHAI has approached the local authorities of the State Government i.e. Collectors under the Jammu and Kashmir Land Acquisition Act, 1990 for acquiring the required land. Accordingly, the Collectors within their respective jurisdictions have issued notifications under Section 4 of the J&K Land Acquisition Act Svt. 1990 [“1990, Act”] followed by notices issued under Section 6 and 7 of the 1990 Act by the Government. It is the allegation of the petitioners that the notices issued under Section 4 by the Collectors for acquisition of the land in their respective jurisdictions are mostly published in English Daily Newspapers, though they are fully aware that 90% of the land owners are illiterate. It is the case of the petitioners that the procedure laid down in 1990, Act for publication of notices under Section 4 has been followed in breach. It is submitted that in some cases where land owners or some of them came to know of the publication of section 4 notification(s) in English Daily newspapers filed their objections but same, too, have not been disposed of by the Collector(s) concerned. In short, the grievance of the petitioners is that the entire acquisition proceedings have been conducted at their back by throwing the procedure prescribed under the 1990, Act to wind, which has resulted in grave miscarriage of justice. The petitioners were not given an opportunity to object to the acquisition or to the rates proposed for payment of compensation.

3. Apart from pointing out the procedural illegalities allegedly committed by the Collectors, the petitioners have also joined issue on the applicability of J&K Land Acquisition Act, 1990 to the acquisition in question. The petitioners have even gone to the extent of challenging the constitutional validity of the 1990, Act on the ground that it violates Article 14 and 19 of the Constitution of India. The mode and manner prescribed in the State Act for determination of compensation is also assailed by the petitioners as highly unreasonably and arbitrary. In short, it is pleaded by the petitioners that 1990, Act does not provide mechanism for determination of fair and just compensation to be paid to the land losers in the process of acquisition by the State.

4. In the backdrop of aforesaid factual matrix, the petitioners have *inter alia* prayed for following writs:-

- i) Writ of mandamus to declare State Land Acquisition Act, 1990 as amended from time to time as *ultra vires* the Constitution of India.
- ii) Mandamus to the respondents to pay compensation to the petitioners in lieu of their land acquired by the NHAI for construction of ring road in terms of communication of the NHAI dated 04.10.2017, wherein the NHAI has intimated to the Deputy Commissioner, Budgam to determine and finalize the land acquisition compensation by adopting **Right to Fair Compensation and Transparency in Land Acquisition,**

Rehabilitation and Resettlement Act, 2013 [“RFCTLARR Act”]

5. From a reading of the petitions and the reliefs prayed therein, it clearly transpires that, though, the petitioners have very vehemently challenged the constitutional validity of the State Act, yet their entire focus seems to be on determination of the compensation payable to them in lieu of their land sought to be acquired for construction of ring road in terms of RFCTLARR Act. The proceedings, which were initiated under the State Act and were pending at the time of Jammu & Kashmir Reorganization Act, 2019, are to be ordinarily completed under the State Act. The controversy raised by the petitioners in these petitions, thus, lies in a narrow compass. This Court is called upon to determine as to whether the land acquisitions in question are required to be conducted under the 1990, Act or the RFCTLARR Act. To determine this controversy, we may have to travel through some salient provisions of the National Highways Act, 1956 and the National Highways Authority of India Act, 1988. However, before we embark upon such exercise, we deem it necessary to briefly allude to the stand of the respondents in these petitions.

Reply of NHAI

6. In the reply affidavit filed by the National Highway Authority of India through its Project Director, it is submitted that the Government of India, Ministry of Road Transport and Highways envisioned and sanctioned a prestigious project known as ‘Semi Ring Road’ around

District Srinagar in the State of J&K. The project is aimed at economic upliftment of the State and to de-congest the city of Srinagar. The execution of this project has been entrusted to NHAI, which is a Government of India undertaking, performing its functions under the aegis of Ministry of Road Transport and Highways. It is submitted that Semi Ring Road around District Srinagar has been declared as a prestigious project with assured allocation of funds in the union budget. It is a time bound project and is being executed at the expense of tax payers. It is largely in general public interest. It is submitted that so far as acquisition of land and providing same to NHAI after determining the compensation payable therefor and the structures raised thereupon is the responsibility of the department of revenue, Government of Jammu & Kashmir. It is submitted that whatever payment is determined by the Collectors under the State laws is being paid by the NHAI through the concerned collectors for disbursement to the concerned beneficiaries.

7. Regarding the claim of the writ petitioners that they are entitled to payment of compensation to be determined under RFCTLARR Act, it is submitted that RFCTLARR Act, 2013, which has been strongly relied upon by the petitioners to put forth their claim, is a Central Act and was, therefore, not applicable to the erstwhile State of Jammu & Kashmir. The land acquisitions in the erstwhile State of J&K were being governed by the 1990, Act. It is further submitted that as a matter of record, the NHAI through its communication dated 04.10.2014, has left it to the Collectors concerned to decide and fix reasonable rates for the land to be acquired. It

is submitted that vide letter dated 04.10.2017 the National Highway Authority of India had conveyed the Deputy Commissioner, Budgam to finalize the compensation in favour of the land losers in the process of acquisition by adopting the RFCTLARR Act, if deemed fit. The Collectors Land Acquisition of the Districts in question, being bound by the law under which they were created, proceeded to acquire the land coming under the alignment of the road by following the provisions of the State Act. It is thus, contended that the NHAI never consented for payment of compensation as per the RFCTLARR Act, in that, the RFCTLARR Act was not applicable in the State of J&K, however, it did convey to the Deputy Commissioners concerned to compute the compensation to be paid to the land losers by adopting RFCTLARR Act, if deemed fit. It is further submitted that since there was legal hitch in adopting the RFCTLARR Act in the State of Jammu & Kashmir, as such, the revenue authorities were justified in going ahead with the acquisition process under the provisions of the State Act.

Reply by the Revenue Authorities:-

8. The reply affidavit filed on behalf of the revenue authorities through Collector Land Acquisition, Ring Road, Pulwama discloses that the entire proceedings beginning with issuance of notification under Section 4 and culminating into passing of the final award have been conducted under the State Act. It is submitted that 80% of the compensation already stands released and received by the land losers/rightful claimants of village Khadermuh and the balance amount

was being paid, which, too, has been received by almost 75% of the land losers. The possession of the land acquired, it is submitted, also stands handed over to the NHAI since 05.05.2018. Regarding allegation of the petitioners that notices under Section 9 and 9(A) of the State Act were not duly published, the respondent-Collectors are on record to submit that these notices were published in Daily Newspapers like Greater Kashmir, Kashmir Aman and Lake City Times etc. besides copy of these notices was also affixed at conspicuous places in the proposed land and served on the interested persons through Patwaries of the patwar halqas concerned.

9. The revenue department in its reply affidavit has also taken a specific stand that in all these cases Section 17 of the State Act was invoked and the Collectors were permitted to take over the possession on payment of 80% of the compensation. It is, thus, submitted that there was no procedural illegality committed by the Collectors in performing their duties as Collectors under the State laws.

10. In the clubbed matter i.e. OWP No.617/2018, the petitioners have also filed their rejoinder affidavit refuting the stand of the respondents. It is submitted that since the entire proceedings conducted by the Collectors under the State Act are vitiated in law, as such, the final award passed in the matter is of no significance and has to go alongwith the proceedings.

11. Having heard learned counsel for the parties and perused the material on record, we shall, at the outset, take on record the statement of Mr. Mohd. Yousaf Bhat, learned senior counsel that he does not wish to

press his challenge mounted to the constitutional validity of the State Act in view of the subsequent developments i.e. the enactment of J&K Reorganization Act, 2019, which with effect from 31.10.2019 not only repealed the 1990, Act but also brought in the operation in the Union Territory of J&K, the RFCTLARR Act, 2013.

12. Since the process of acquisition in question was initiated prior to the promulgation of Reorganization Act, 2019, as such, the discussion in the instant case revolves around the applicability or otherwise of the State Act to the acquisitions made for and on behalf of National Highways Authority of India for construction of ring road, a part of National Highway Development Project, Phase-VII. Extensive arguments were addressed on both sides on the aforesaid pivotal issue. There is good deal of discussion on the other allied issues arisen for determination in these petitions.

13. Mr. M.Y.Bhat, learned senior counsel through his written submissions has highlighted following points for determination:-

- i) Whether Semi Ring Road Project, Srinagar is a National Highway Project and if answer is in the affirmative, whether the process of acquisition of land coming under the project is required to be initiated under Section 3A of the National Highways Act, 1956 [“NH Act, 1956”] read with RFCTLARR Act, 2013?
- ii) Whether the declaration and notification of a stretch of road (Semi Ring Road in the instant case) as a National Highway under Section

2 of the NH Act, 1956 is sine qua non for initiating process of land acquisition under Section 3A of the NH Act, 1956?

iii) Which law of acquisition shall be applicable in acquisition to be made in the UT of Jammu & Kashmir for constructing Semi Ring Road, Srinagar?

14. As a matter of fact and in view of the arguments addressed on both sides, the determination of aforesaid three issues highlighted by Mr. M.Y.Bhat, learned senior counsel, will put an end to the controversy raised in these petitions.

Issue No.(i)

15. The National Highways Development Project is a project to upgrade, rehabilitate and widen major highways in India to a higher standard. This project was given green signal in 1998 under the stewardship of the then Prime Minister of India, Sh. Atal Bihari Vajpayee. This project was entrusted to be executed and managed by the NHAI, a Government of India undertaking, working under the aegis of Ministry of Road Transport and Highways. The NHDP, we are told, is composed of seven phases. Phase-VII calls for improvements to city road networks by adding ring roads to enable easier connectivity with national highways to important cities. Srinagar Ring Road and the Jammu Ring Road are part of NHDP phase-VII. This position, which is highlighted by Mr. M.Y.Bhat is available on the NHAI website and is not refuted before us by the learned counsel appearing for the NHAI.

16. Construction of Srinagar Ring Road, a prestigious project, sanctioned by the Government of India, Ministry of Road, Transport and Highways is to be executed by the NHAI. Referring to page-12 and 21 of Booklet "PRAGATI KI NAYE GATI" published jointly by Ministry of Road Transport and Highways and NHAI, the Srinagar Ring Road is a part of existing National Highway NH 1A. The ambitious umbrella (Bharatmala Pariyojajna) programme has subsumed all highway projects including the flagship National Highway Development Project launched by the Government of India in 1998. Under the Bharatmala Pariyojajna, new guidelines and SOP have been issued under which the balance road work under NHDP project have been decided to be taken up under the new programme. Annexure1(a) of the new guidelines for National Corridors Efficiency Improvement provides for lane expansion, decongestion of existing national corridors through ring roads and by-passes/elevated corridors. Around 5000 kilometers are being taken up under this category in Phase-I of the programme. The Srinagar Ring Road finds mentioned at serial No.104 of page 28 of the guidelines.

17. From the aforesaid and in the absence of any contrary material brought to our notice by NHAI, we are of the considered view that the Srinagar Ring Road is a part of existing National Corridor NH-1A. Various communications placed on record, particularly, indent placed by the Project Director, NHAI before the Collectors Land Acquisition under the State Act are indicative of the fact that Srinagar Ring Road/bye-pass around Srinagar is part of NHDP Phase-VII. We, therefore, agree with the

petitioners and hold that the Ring Road undertaken for construction by NHAI is a part of NHDP Phase-VII, which is now Bharatmala Pariyojna, is a part of National Corridor Efficiency Improvement i.e. a part of existing National Corridor NH-1A. That being the position, our answer to the first issue framed is in the affirmative.

18. We are aware that Srinagar Rind Road, which is under construction by NHAI, is yet not notified as a National Highway under Section 2 of the NH Act, 1956. In terms of Section 2 of the NH Act, 1956, Highways specified in the Schedule are declared to be a national highways and the Central Government is empowered by a notification in the official gazette to declare any other highway to be a national highway and on the publication of such notification such highway shall also be deemed to be specified in the Schedule. Similarly, the Central Government is conferred with the power, by issuing like notification to omit any highway from the Schedule and on publication of such notification, highway so omitted shall be deemed ceased to be a national highway.

19. Indisputably, Srinagar Ring Road is yet not declared by the Central Government as a national highway in terms of Sub Section (2) of Section 2 of the NH Act, 1956. Section 3A of the NH Act, 1956 is at the core of controversy raised in these petitions. Therefore, it deserves to be set out below:-

“3A. Power to acquire land, etc.--(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or

operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.”

20. In terms of Section 3A, as would be clear from its plain reading, the central government shall, by notification in the official gazette, declares its intention to acquire any land which in its opinion is required for a public purpose viz. building, maintenance, management or operation of national highway or part thereof. Once a notification of intention is issued by the central government, the competent authority shall cause the substance of the notification to be published in two daily newspapers, one of which will be in a vernacular language and set out the process for acquisition.

21. It needs to be noticed that the power to acquire land under Section 3A conferred upon the central government is not restricted to the acquisition of land for maintenance, management or operation of an existing national highway or part thereof but would also extend to the acquisition of land required for building, maintaining and operating of highway, which is proposed to be notified as national highway in future. Hon'ble the Supreme Court of India in **Project Implementation Unit NHAI v. Krishnamoorthy and others, (2021) 3 SCC 572** has in paragraph Nos. 64 and 65 held thus:-

“64. It must be assumed that the broadbased committee of experts in the field, was fully aware of the governing policies and criteria for designating national highways. It was also cognizant of the requirements and priorities of the concerned area and the norms specified for prioritising the stretches/sections. In that, national highways are regarded as arteries of the country’s economy. That there is marked distinction and importance of being a National Corridor, in preference to the Economic Corridor which is for connection of economically important production and consumption centres (44 identified) under the Project (Bharatmala Pariyojna Phase I). Hence, it was unanimously resolved by the Committee to opt for National Corridor for the stretch/section ChennaiSalem inter alia because it would be the shortest route with very minimal logistical issues in completion thereof. That was also for efficiency improvement of existing Economic Corridor [CM (EC)] and for decongestion of corridor network with seamless connectivity with National corridor. Even the Project (Bharatmala Pariyojna Phase I) focuses on enhanced effectiveness of already built infrastructure, multimodal integration, bridging infrastructure gaps for seamless movement and integrating National and Economic Corridors. As per this project, the Golden Quadrilateral and NSEW Corridors carrying 35% of India’s freight were to be declared National Corridors.

65. The criteria for selection of corridors has been spelt out thereunder as follows:-

“1. Criteria for selection of corridors

Selection criteria for projects to be taken up under Bharatmala Phase-1 are to be as follows:-

Sl No.	Component of Bharatmala Pariyojana	Interse priority determination criteria for selection of stretches
1.	Economic Corridor Development	Economic corridor development program focuses on developing new corridors, in addition to existing Golden Quadrilateral (GQ) and North South-East West corridors (NSEW). It is planned to develop these corridors end to end to ensure seamless and speedy travel and to ensure uniformity in standards in terms of speed, design of various elements of roads, control of

		ccesses, way side amenities, road safety features, etc. Once upgraded it will ensure substantial increase in speed and time of travel for both freight and passenger traffic at large across the country.
2.	Inter Corridor and feeder roads development	<p>Stretches of roads connecting more than 2 corridors are classified as intercorridors routes, while other routes connecting to 1 or 2 corridors are termed as feeder routes.</p> <p>Selection Criteria: Stretches with less than 4 lane</p> <ul style="list-style-type: none"> • infrastructure leading to infrastructure asymmetry on the corridor; • Higher traffic in terms of PCU; • Stretches with ease of Land Acquisition and preconstruction activities and DPR preparation;
3.	National Corridors Efficiency Improvement	<p>National Corridor Efficiency Improvement program will focus on improving the efficiency of the existing corridors (GQ and NSEW), by removing the congestion points on the corridor to improve the average speed on the corridor. Interventions such as controlling access on the corridor, uniform corridor tolling, development of bypasses, ring roads, fly overs at choke points will be taken up to improve the average speed on the existing corridors in line with the best in class corridors.</p> <p>Criteria:</p> <ul style="list-style-type: none"> • Congestion records; • Road safety consideration • Higher traffic would be prioritized; Focus on Ring roads; mobilization/acquisition of land by State Governments; • Connectivity of Logistics Parks;
4.	Border and International Connectivity roads	<p>Criteria:</p> <p>Synergy with development of Integrated check post, Government priority; IMT/BIN/ BIMSTEC MVAs Stretches of ease of Land Acquisition and pre-construction activities and DPR preparation</p>
5.	Coastal and Port connectivity roads	<p>Criteria:</p> <ul style="list-style-type: none"> • Development status of Ports; • Equity Participation by Stake holders; • Synchronization with other port

		development under Sagarmala; • Ease of Land Acquisition and pre construction activities and DPR preparation;
6.	Expressways	Criteria: • Constraint in capacity• augmentation of important NHs 83 where PCU>50,000; • Nigher traffic would be prioritized; • Synchronization with rapidly growing Industrial Activities; • Stretches with ease of Land Acquisition and preconstruction activities and DPR preparation.”

22. Competent Authority, as defined in Section 3 of the NH Act, 1956, means any person or authority authorized by the Central Government, by notification in the official gazette to perform the functions of the competent authority for such area as may be specified in the notification. Section 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3J lay down elaborate procedure to be followed in the acquisition proceedings to be undertaken pursuant to a declaration made by the Central Government under Section 3A of the NH Act, 1956.

23. It is, thus, evident that, for issuance of notification under Section 3A, declaration/notification of a particular stretch of road as national highway is not a condition precedent. The government is competent and is empowered under Section 3A to issue notification in the official gazette declaring its intention to acquire land for the building of a national highway. It is a common knowledge and is well spelt out by the provisions of National Highways Act, that what is notified as a national highway under Section 2 is an existing highway. Section 2 deals with declaring certain existing highways to be national highways. Thus, from a

reading of Section 3A along with Section 2, it would become abundantly clear that for issuing a notification under Section 3A by the central government, advance declaration of a highway, yet to be constructed, as national highway is not sine qua non. Such declaration presupposes existence of a highway.

24. In the instant case, Ring Road Srinagar is a prestigious project of the Government of India, Ministry of Road Transport and Highways, to be executed by NHAI. It was envisaged as part of NHDP Phase-VII and now part of Bharatmala Pariyojana under which the National Corridor Efficiency Programme has been taken up. The National Corridor Efficiency Improvement to be implemented under Phase-I includes six laning of national corridors, congestion removal through flyovers, by-passes, ring roads etc. To segregate Srinagar Ring Road Project from being part of and allied road of the national highway may not be correct thing to do in the facts and circumstances of the case. Even if, we assume and agree with the respondent-NHAI that the Srinagar Ring Road is a standalone project and is neither a national highway or a part thereof nor is it intended to be declared so in future, we fail to understand as to how the NHAI could then treat a stretch of the ring road from Km 42.00 to Km 66.00 (Bandipora) of the Srinagar Ring Road Phase-II as part of the national highway and Government of India has issued notification on 30.09.2022 in the exercise of powers conferred by Sub Section (1) of Section 3A of the NH Act, 1956. Similar is the position with regard to similar 'Ring Roads' being constructed by NHAI elsewhere in the

Country. Treating them as part of National Highways project, the Government has issued necessary declarations and acquisitions have been made by the competent authority under NH Act, 1956.

25. From the above discussion, we are persuaded to conclude that the Srinagar Ring Road Project as a whole is a national highway project and, therefore, needs to be treated as part of existing National Highway 1A. It is not necessary to declare it a national highway under Section 2 of the NH Act, 1956 atleast till it is completed. Necessarily and without any doubt, Srinagar Ring Road is atleast proposed to be a part of national highway NH 1A. Notwithstanding that a declaration in terms of Section 2 is yet to be made, the Central Government is obliged in law, in terms of Section 3A, to initiate the process of acquisition under the NH Act, 1956.

26. The salient features laid down in the scheme of Sections 3A to 3J is that the moment declaration under Section 3A is issued by the Central Government in the official gazette then the land should be acquired for the purposes mentioned in Sub Section (1) of Section 3A. The land in respect of which such notification is issued shall vest absolutely in the Central Government free from all encumbrances. Rest of the procedure viz. determination of compensation may follow but the Government in terms of Section 3D of NH Act, 1956 read with Section 3E get the right to take possession of the land vested in it immediately after the publication of the declaration in official gazette under Section 3D. Other noticeable features could be seen in Section 3G, which provides that where the amount of compensation determined by the competent authority is not acceptable to

either of the parties, amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government. Subject to the provisions of NH Act, 1956, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to every arbitration under the Act.

27. We cannot miss out the provisions of Section 3J of NH Act, 1956, which clearly provide that the Land Acquisition Act, 1894 (A Central Act) shall not apply to an acquisition under the NH Act, 1956. In terms of Section 4, all national highways shall vest in the Union and the national highways would include all lands appurtenant thereto, whether demarcated or not, all bridges, culverts, tunnels etc and other structures constructed on or across such highways; and all fences, trees, posts and boundary, furlong and milestones etc etc and any land appurtenant to such highways.

28. Viewed thus, it is more than evident that NH Act, 1956 is a complete code in itself insofar as acquisition of land required for building, maintenance, management and operation of the national highway is concerned. The provisions of central land acquisition laws are clearly excluded. The object of excluding general land acquisition laws and acquiring land and determining compensation by a special procedure prescribed under the NH Act, 1956 was to cut short the delay in acquisition so that the prestigious projects of national importance are executed with expediency and requisite pace. The position, however, has changed with the coming into force of the RFCTLAAR Act, 2013 w.e.f.

01.01.2014. The Act, as would be evident from Sub Section (2) of Section 1, was not applicable to the State of J&K. Sub Section (2) of Section 1 of the RFCTLAAR Act, 2013, as it stood on the date of its promulgation would read thus:-

“2. It extends to the whole of India except the State of Jammu & Kashmir”.

This position existed till the promulgation of J&K Reorganization Act, 2019. The words “except the State of Jammu & Kashmir” were omitted. It is, thus, clear that till 30.10.2019, the RFCTLAAR Act, 2013, which had brought in a revolution of sorts in the matter of acquisition of land for public purposes and payment of compensation in lieu thereof to the land losers, was not extended to the State of Jammu & Kashmir. It, however, came to be extended to the UT of Jammu & Kashmir w.e.f. 31.10.2019 by the Act of 34 of 2019. It is, thus, not in dispute that on the date/dates, when acquisitions in question were set in motion by the Collectors in their respective jurisdictions by issuing notification under Section 4 of the State Act, the law that was applicable in the then State of Jammu & Kashmir was the State Land Acquisition Act, 1990. True it is that National Highways Act, 1956, which extends to the whole of India, was applicable to the State of Jammu & Kashmir/UT of Jammu & Kashmir.

29. In view of the aforesaid clear legal position, once we hold that Srinagar Ring Road is a part of national highways project then in terms of

communication of Government of India, Ministry of Road Transport and Highways bearing No.NH-11011/30/2015-LA dated 28.12.2017, the land required for national highways project is required to be acquired under the provisions contained in Section 3A of the NH Act, 1956. The National Highways Act, 1956, as we have observed herein above, excludes the applicability of the central land acquisition laws and for a good reason because the National Highways Act, 1956 is a complete code in itself and provides for acquisition of land required for national highways project and determination of payment of compensation to the land losers. The NH Act, 1956 also provides for determination of disputes, if any, raised by either of the parties in respect of the amount of compensation or other related issues of acquisition.

30. The plea of Mr. M.Y.Bhat, learned senior counsel appearing for the petitioners, that the National Highways Authority, was not only under an obligation to acquire the land of the petitioners for construction of Ring Road, a national highways project, but it was also obliged to determine the compensation in accordance with 1st Schedule, rehabilitation and resettlement in accordance with the 2nd Schedule and infrastructural amenities in accordance with 3rd Schedule of the RFCTLARR Act, 2013 is bereft of any substance and deserved to be noticed for outright rejection.

31. As discussed above, we reiterate that at the time the process for acquisition was initiated by the different Collectors within their respective jurisdictions under the State Act, the RFCTLARR Act, 2013 was not

applicable in the State of Jammu & Kashmir. It is only by virtue of the provisions of Ordinance No.9 of 2014 dated 31.12.2014, entailing an amendment to, inter-alia Section 105 followed by RFCTLARR (Removal of Difficulties) Order, 2015 issued by the Department of Land Resources, Ministry of Rural Development, Government of India, the provisions of RFCTLARR Act, 2013 relating to the extent of determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule came to be applied to all the cases of land acquisition under the enactments specified in the Fourth Schedule of the RFCTLARR Act, 2013.

32. It is not in dispute that NH Act, 1956 is at Serial No.7 of the 4th Schedule. Since RFCTLARR Act, 2013 was not, at the relevant point of time, applicable to the State of Jammu & Kashmir, as such, the acquisition of land for building, maintenance, management and operation of the national highways were regulated under the National Highways Act, 1956. The mode and manner in which the process was to be undertaken, the compensation determined and the disputes resolved are provided in Section 3A to Section 3J of the National Highways Act, 1956.

33. Absent the applicability of RFCTLARR, Act 2013 to the State of Jammu & Kashmir, the provisions of central land acquisition laws, which were then applicable for acquisition and payment of compensation, were completely excluded.

34. In view of the aforesaid discussion, we hold that in the instant case, the proper course for the respondents was to initiate the process of acquisition under Section 3A of the NH Act, 1956 and proceed to complete the acquisition proceedings and determine compensation under Section 3A to 3J of the NH Act, 1956.

35. Issue No.3 is elaborately discussed and properly replied in the discussion made on issue No.1. Similarly, issue No.3 also stands answered in issue No.1. As a matter of fact, issue Nos. 2 and 3 are subsumed in wide sweep of issue No.1. In view of the elaborate discussion and the determination made on issue No.1, there is hardly any need to specifically answer issue Nos. 2 and 3.

36. Summing up the discussion, we hold thus:-

- i) That Srinagar Ring Road may not be notified/declared as national highway but is a part of national highways project and, therefore, all land required for construction of the Srinagar Ring Road is required to be acquired under the National Highways Act, 1956.
- ii) Absent the applicability of RFCTLARR Act, 2013 to the State of Jammu & Kashmir till 30.10.2019, the process of acquisition and determination of compensation as also resolution of dispute, if any, between the parties shall govern by the provisions of Section 3 to 3J of the National Highways Act, 1956/

Relief:

37. In view of the discussion made above, the petitions succeed to the extent that the process of acquisition embarked upon by the respondents is found to be without jurisdiction. The Collectors Land Acquisition appointed under the State Land Acquisition Act, 1990, as was then applicable, were not competent to acquire the land and determine compensation therefor for the building, construction, management and operation of the national highways.

38. Since acquisition in these cases have been completed and the final awards passed under the State Land Acquisition Act, 1990, which, as we have held, was not in consonance with law, as such, it would be difficult rather inadvisable, at this stage, to set the clock back. Furthermore, most of the villagers affected by land acquisition have already received compensation. Possession of acquired land has been taken and a major portion of it has been utilized for construction of the ring road. The Srinagar Ring Road project is a very prestigious project envisioned by the Government of India in larger public interest. We could have directed the authorities to atleast re-determine the compensation payable to the petitioners and other land losers by following the provisions of the National Highways Act, 1956 i.e. Section 3A to 3J and pay the additional compensation, if any, to the land losers but we are sure that the determination of compensation under National Highways Act, in the absence of applicability of RFCTLARR Act, 2013, may not be much beneficial to the petitioners. We, accordingly, modify the relief prayed for and direct the respondents to enhance the compensation payable to the

petitioners by 20%. This would meet the ends of justice and would be a sort of penalty to the respondents for not following the due process of law.

39. The concerned Collectors shall issue the amended awards and disburse the balance compensation, if any, payable to the land losers (interested persons) within a period of two months from today.

40. Before parting, we make it clear that the petitioners or any of them, who is aggrieved of the determination of compensation as may be notified through amended awards shall be free to seek reference under the State Land Acquisition Act, 1990. The reference, however, shall be limited to the seeking of enhancement in basic compensation. Additional compensation to the extent of 20%, as provided by us, shall not be part of any dispute or debate before any forum subordinate to this Court.

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

JAMMU
28.04.2023
Vinod,PS

Whether the order is reportable: Yes