

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

Reserved on: 09.11.2023
Pronounced on: 22.12.2023

OWP No.1441/2012

GHULAM AHMAD BHAT & OTHERS ...Petitioner(s)

*Through: - Mr. Syed Riyaz Khawar, Advocate, with
Mr. Aabid Hamid, Advocate.*

Vs.

STATE OF J&K AND OTHERS ...Respondent(s)

Through: - Mr. Jahangir Dar, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioners have sought a direction upon the respondents to pay a compensation of Rs.14.00 lacs per kanal along with solatium of 15% and interest in respect of land measuring 02 kanals and 16 marlas under Survey No.338/34-min situated at Parimpora Srinagar.

2) According to the petitioners, they were owners in possession of the land in question and the same was taken over by the Irrigation & Flood Control Department of the Government for construction of Shalteng Irrigation Canal a long time back. It has been submitted that the respondents approached the petitioners for taking over the land in question and they assured the petitioners that in

lieu thereof, they will be paid compensation. However, without paying any compensation to the petitioners, the respondents forcibly took over possession of the land in question in the year 1978-79. It has been further contended that the petitioners requested the respondents either to vacate the said land or in the alternative to pay compensation to them and in this regard a number of representations were filed by the petitioners with the respondents.

3) Ultimately, on 18.04.2008, respondent No.1 issued indent certifying therein that they have taken over the land in question of the petitioners for the purpose of construction of Shalteng Canal. Vide No.LAIF/585-92 dated 28.01.2010, respondent No.4 passed the tentative award whereby he recommended compensation @Rs.14,36,500/ per kanal with 15% solatium in favour of the petitioners in respect of the land measuring 02 kanals 05 marlas only. The total compensation recommended for the said land was Rs.37,16,943/.

4) The Assistant Commissioner, Revenue, Srinagar, vide his letter No.DCS/LAC/875/343 dated 23.06.2010, approved the rates recommended by the Collector. On 04.10.2010, Executive Engineer, Irrigation Division,

Sumbal Sonawari, addressed a communication to the Superintending Engineer, Hydraulic Circle, District Baramulla, recommending case of the petitioners for grant of compensation and the Chief Engineer, Irrigation & Flood Control Department, Kashmir, asked the Collector Land Acquisition to release Rs.14.00 lacs unspent balance money in favour of the petitioners. According to the petitioners, the Deputy Commissioner, Srinagar, has, vide his letter No.DCS/LAC /1875/343 dated 23.06.2010, approved the tentative award and the Collector, Land Acquisition, vide his letter dated 19.04.2012, informed this position to the Executive Engineer concerned and he further asked him to submit the possession certificate.

5) It has been contended that the possession of the land in question has been taken over by the respondents in the year 1978-79 and they have constructed an Irrigation Canal on the said land but despite approval of award by the Deputy Commissioner, Srinagar, the compensation has not been disbursed in favour of the petitioners.

6) The respondents, in their reply to the writ petition, have submitted that with reference to the instant case, a Committee was constituted at Divisional level to examine the records pertaining to the subject land compensation

case. The Committee has reported that on the basis of Fard Intikhab Jamabandi issued by Tehsildar, Srinagar, on 21.01.2012, the respondents are not liable to pay any compensation for the land in question. The relevant portions of the report of the Committee have been reproduced in the reply and the same provides as under:

“The committee constituted for securitizing the above mentioned land compensation case had several sittings. From the records available on the file, it is evident that the land in question has been acquired by the Deptt. long time back. The latest Intikhabi Girdawari, Jamabandi dated 21-01-2012 issued by the Patwari Halqa namely Bashir Ahmad Mir and duly countersigned by Naib Tehsildar Chatabal Srinagar clearly mentions that the land has been recorded in the name of the irrigation Deptt. in the year 1999. Also, from local evidence it has been revealed that the canal was previously called Bakshi Canal after the name of late Bakshi Gh. Mohammad, the then Prime Minister of J&K who remained Prime Minister of J&K State upto 1962. This too is indicative of the fact that the land has been acquired long time back.

As per standing Government orders land acquired by any Department prior to 1977 is not liable to compensation. The case may be accordingly disposed.”

7) After hearing the parties, the writ petition was disposed of by this Court in terms of order dated 29.07.2015. The said order is reproduced as under:

1. After hearing learned counsel for the parties for a while, it emerges that in terms of the tentative award dated 28.01.2010, land measuring 2 kanal 05 marlas falling under Khasra No. 338/34 min situated at Parimpora, Srinagar, belonging to the petitioners, has been acquired. An amount of Rs. 32,32,125/- has been determined as a compensation with an amount of Rs. 4,84,818/- determined as Jabrana. Thus, petitioners have been held entitled to total amount of Rs.37,16,943/- as compensation. It further appears

that despite lapse of more than five years, the claim of compensation has not been approved by the Deputy Commissioner although the Collector directed to disburse the compensation amount as per entitlement. However, the petitioners have been dragged from pillar to post. Learned counsel for the petitioners has referred to various documents in this regard which are annexed with the writ petition. Reference has also been made to communication dated 19.04.2012 from the Collector, Land Acquisition, Irrigation & Flood Control Department, Srinagar, to the Executive Engineer, Irrigation & Flood Control Division, Sumbal, which states that the tentative award passed on 28.01.2010 has been approved by the Deputy Commissioner, Srinagar, in terms of the approval order dated 23.06.2010.

2. The writ petition has been admitted to hearing on 16.05.2014. Respondents have filed the reply. In the reply filed by respondents 1, 2 and 6, it is admitted that subject matter of the writ petition has been recorded in the name of Irrigation Department in the year 1999 clearly indicating that the same has been acquired by Irrigation and Flood Control Department. Learned counsel for the respondents 1, 2 and 6 fairly concedes that the subject matter of the petition has been acquired by Irrigation and Flood Control Department in terms of tentative award dated 28.01.2010 and petitioners are entitled to amount of compensation determined at Rs.37,16,943/- which includes Jabrana. It is shocking that despite lapse of more than five years, petitioners claim for compensation has not been satisfied, thereby violating the fundamental rights of the petitioners.

3. In the aforementioned backdrop, this writ petition is allowed and is disposed of with a direction to the respondents to pay the aforesaid compensation as determined by the District Collector together with interest, as admissible under rules, to the petitioners, in lieu of the land strictly in terms of the final award passed by the Collector, as expeditiously as possible, preferably within four weeks, which period shall begin from the date copies of this order are served upon the official respondents. I order accordingly.

4. Disposed of along with CMP.

8) It seems that the aforesaid order was assailed by the respondents by way of a Letters Patent Appeal before the

Division Bench whereafter the matter landed before the Supreme Court by way of a Special Leave Petition filed by the respondents against the order of the Division Bench. Vide order dated 15.12.2017, the Supreme Court disposed of the Special Leave Petition (Civil) No.35672/2017, whereby the case was remanded to this Court for fresh decision. Order dated 15.12.2017 passed by the Supreme Court is reproduced as under:

Heard learned counsel for the petitioners.

Delay condoned.

This matter arises out of direction to pay compensation for the acquired land. The objection of the State is that the land vested in the State itself and acquisition was without taking into account the record showing that the land was vested in the State. A Committee vide order dated 10.07.2012 found that the land vested in the State. This fact has not been gone into by the High Court.

Since the above aspect is crucial to the claim for compensation, we are of the view that this aspect ought to be gone into. Accordingly, we set aside the impugned order and restore the OWP No.1441 of 2012 to the file of the High Court before the learned Single Judge.

The learned Single Judge may look into factual aspects about the title and proceed with the matter in accordance with law. The petitioner(s) may serve the respondents with this matter and appear before the learned Single Judge for further proceedings on 5th February, 2018.

Since this order is being passed ex parte, the respondent(s) will be at liberty to move this Court, if aggrieved.

The special leave petition is, accordingly, disposed of.

Pending application(s), if any, shall also stand disposed of.

9) After the remand of matter to this Court, the respondents filed an application bearing CM

No.4468/2023 seeking permission to place on record certain documents. The said application was allowed and the documents, namely, copy of order dated 15.12.2017 passed by the Supreme Court, copy of the report of the Committee dated 23.07.2012 and the copies of extracts of Jamabandi and Khasra Girdawari in respect of the land in question were taken on record.

10) I have heard learned counsel for the parties and perused record of the case.

11) As is clear from the order passed by the Supreme Court, the respondents have taken a stand before the said Court that the land in question had vested in the State and this aspect of the matter was not taken into account by this Court while disposing of the writ petition in terms of order dated 29.07.2015.

12) It is pertinent to mention here that order dated 15.12.2017 was passed by the Supreme Court in exparte. It has been directed by the Supreme Court that this Court should look into the factual aspect about the title and proceed with the matter in accordance with law. Thus, in the light of the directions of the Supreme Court, this Court has to look into the aspect of title relating to the land in question.

13) As per the copy of Jamabandi placed on record by the respondents after remand of the case, name of the petitioners is shown in the column of 'owners' and the land measuring 02 kanals 05 marlas has been shown to be in the occupation of the Irrigation Department. A note is recorded in the Jamabandi that occupation of the Irrigation Department has been entered in the revenue record in the year 1969 and the custody of the said land has been taken over by the said Department in the year 1978 by constructing a canal thereon. Thus, the documents produced by the respondents (in fact, these documents were also produced by the petitioners along with their writ petition) show that the land in question is owned by the petitioners and the same is in occupation of the Irrigation Department since the year 1969 and that they have constructed an irrigation canal on the said land in the year 1978.

14) The question that arises for determination is whether taking over of possession of the land in question by the Irrigation Department way back in the year 1969 disentitles the petitioners, who are, admittedly, owners of the land in question, from claiming compensation, particularly when there is no dispute to the fact that they

have not been paid any compensation in respect of the said land.

15) Learned counsel for the respondents has vehemently contended that in terms of SRO 154 of 1986 dated 7th March, 1986, no compensation is payable by the Government in respect of the lands, possession whereof has been taken over by the Government prior to issuance of notification No.419 dated 19.09.1981.

16) If we have a look at SRO 154, it provides that only in those cases where the persons have donated land to various Government Departments for public purposes and the possession thereof has been taken over by the Government before the aforesaid date, the compensation is not payable. In the instant case, the respondents do not even allege that the land in question was donated by the petitioners to them. There is no record produced by the respondents to even remotely suggest that the land in question has been donated by the petitioners to the respondents. At least the revenue record produced by the parties before the Court does not suggest so. In the face of this situation, SRO 154 dated 7th March, 1986 is not applicable to the instant case.

17) Another contention raised by learned counsel for the respondents is that the petitioners cannot be heard to claim compensation in respect of the land, possession whereof has been taken over by the respondents way back in the year 1969. While relying upon the judgments of this Court in the cases of **Ghulam Ahmad Dar vs. State of J&K and ors.** (OWP No.913/2017 decided on 23rd December, 2022) and **Abdul Qayoom Magray vs. UT of J&K and ors.** (WP(C) No.3549/2019 decided on 04.08.2023), it has been contended that after a lapse of more than 40 years, the petitioners cannot claim compensation from the respondents.

18) In the above context, it is to be noted that right to property was a fundamental right in the erstwhile State of Jammu and Kashmir prior to abrogation of Article 370 of the Constitution of India, as such, it cannot be stated that the petitioners have waived their right to property in favour of the respondents. At present, the right to property may not be a fundamental right, but it is certainly a Constitutional right guaranteed under Article 300A of the Constitution of India, which provides that no person can be deprived of his property save by authority of law. The right to property is a human right as well as a Constitutional right, as has been held by the Supreme

Court in the case of **Indian Handicrafts Emporium and others vs. Union of India and others** : (2003) 7 SCC 589.

Thus, even if the right to property has ceased to be a fundamental right in this part of the Country, still then it continues to be a legal and constitutional right and no person can be deprived of his property except by authority of law. Denial of this right to a person constitutes a continuing cause of action and, therefore, no amount of delay and laches would extinguish the right to property of a person.

19) It is a settled law that the State cannot claim adverse possession in respect of the property belonging to private persons. Therefore, it does not lie in the mouth of the respondents to say that the property in question has vested in them because of their long possession over the same. Recently, the Supreme Court has, in the case of **Vidya Devi vs. State of Himachal Pradesh & Ors.:** (2020) 2 SCC 569, while dealing with this aspect of the matter, held that the cause of action in respect of denial of right to property to a person is a continuing one and no amount of delay or laches can deprive such a person from claiming his right to property. It would be apt to refer to certain observations made by the Supreme Court in the said case which are reproduced as under:

12.1. *The appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution. Article 31 guaranteed the right to private property [State of W.B. v. Subodh Gopal Bose, AIR 1954 SC 92], which could not be deprived without due process of law and upon just and fair compensation.*

12.2. *The right to property ceased to be a fundamental right by the Constitution (Forty-Fourth Amendment) Act, 1978, however, it continued to be a human right [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] in a welfare State, and a constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that Article. [K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414]*

12.3. *To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300-A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai [Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627], wherein this Court held that: (SCC p. 634, para 6)*

“6. ... Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of “eminent domain” may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.”

(emphasis supplied)

12.5. *In Delhi Airtech Services (P) Ltd. v. State of U.P. [Delhi Airtech Services (P) Ltd. v. State of U.P., (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673], this Court recognised the right to property as a basic human right in the following words: (SCC p. 379, para 30)*

“30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government.

Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists."

(emphasis supplied)

12.6. *In Jilubhai Nanbhai Khachar v. State of Gujarat [Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596], this Court held as follows: (SCC p. 627, para 48)*

"48. ... In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

(emphasis supplied)

12.7. *In this case, the appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.*

12.8. *The contention of the State that the appellant or her predecessors had "orally" consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the appellant of her property by the State.*

12.9. *In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi v. MIDC* [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.*

12.10. *This Court in *State of Haryana v. Mukesh Kumar* [State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769] held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights*

have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.

12.11. *We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to “adverse” possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.*

12.12. *The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.*

12.13. *In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it. [P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152 : 1975 SCC (L&S) 22]*

12.14. *In Tukaram Kana Joshi v. MIDC [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491], this Court while dealing with a similar fact situation, held as follows: (SCC p. 359, para 11)*

“11. There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. The functionaries of the State took over possession of the land belonging to the

appellants without any sanction of law. The appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode.”

(emphasis supplied)

13. *In the present case, the appellant being an illiterate person, who is a widow coming from a rural area has been deprived of her private property by the State without resorting to the procedure prescribed by law. The appellant has been divested of her right to property without being paid any compensation whatsoever for over half a century. The cause of action in the present case is a continuing one, since the appellant was compulsorily expropriated of her property in 1967 without legal sanction or following due process of law. The present case is one where the demand for justice is so compelling since the State has admitted that the land was taken over without initiating acquisition proceedings, or any procedure known to law. We exercise our extraordinary jurisdiction under Articles 136 and 142 of the Constitution, and direct the State to pay compensation to the appellant.”*

20) From the foregoing analysis of law on the subject, it is clear that no amount of delay can come in the way of the petitioners to approach this Court for enforcement of their constitutional right to property which, in fact, was their fundamental right at the time when their property was taken over by the respondents. Even otherwise, it is not a case where the petitioners have slept over the matter but it is a case where from the documents placed on record by the petitioners, it is discernible that they have been consistently agitating their right to compensation for the land taken over by the respondents which resulted in passing of the tentative award dated 28.01.2010 that was

approved by the Deputy Commissioner, Srinagar, on 23.06.2010, whereby the total amount of compensation for the land in question was assessed at Rs.37,16,943/

21) So far as the judgments relied upon by learned counsel for the respondents are concerned, the ratio laid down in the said judgments is not applicable to the facts of the instant case for the reason that in those judgments, the land owners had been engaged as employees by the respondents and they were seeking compensation in addition to their engagement as employees. It is in those circumstances that their claim for compensation did not find favour with the Court. In the instant case, it has not even been pleaded by the respondents that any of the petitioners or their kith and kin were offered any Government job by the respondents in lieu of the compensation for the land in question.

22) For the foregoing reasons, there is no manner of doubt that the land measuring 02 kanals 05 marlas owned and possessed by the petitioners has been taken over by the respondents for the purpose of construction of and irrigation canal without paying any compensation to the petitioners. The respondents are, therefore, liable to pay

compensation to the petitioners in terms of the award already passed by the Collector.

23) Accordingly, the writ petition is allowed and the respondents are directed to pay compensation as determined by the Collector together with interest as admissible under rules to the petitioners in terms of the final award passed by the Collector, within a period of one month from the date a certified copy of this judgment is served upon the respondents.

Srinagar
22.12.2023
"Bhat Altaf, PS"

(Sanjay Dhar)
Judge

Whether the order is reportable: Yes/No

