

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

Reserved on: 30.05.2024
Pronounced on: 07.06.2024

CFA No.22/2012

**ADMINISTRATOR NOTIFIED AREA
COMMITTEE KUPWARA**

... APPELLANT(S)

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

Vs.

**KHAZIR MOHAMMAD MALIK
AND OTHERS**

...RESPONDENT(S)

Through: - Mr. M. M. Iqbal, Advocate.

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

JUDGMENT

1) The appellant Notified Area Committee, Kupwara, has filed the present appeal against award/judgment dated 21.10.2011 passed by the learned Principal District Judge, Kupwara, in a land acquisition reference made by respondent No.3, the Collector.

2) The facts emanating from the record are that on the basis of the indent issued by the appellant on 29.03.1997, notification under Section 4 of the J&K Land Acquisition Act (hereinafter referred to as "**the Act**") was issued by the respondent Collector for acquisition of 04 kanals of land for the purpose of construction of Town Hall at Kupwara. The notification was issued vide No.DCK/LA/139-45

dated 07.08.1997 read with No.DCK/LA/156-62 dated 20.08.1997. It appears that no objections were filed to the acquisition of land by the interested persons. However, due to change of alignment, a corrigendum to the notification under Section 4 of **the Act** came to be issued on 03.04.1999 after it was decided to acquired 04 kanals and 2½ marlas of land. Vide No.81 of 1999, notification under Section 6 of the Act was issued by the Collector and on 20.08.1999, notice under Section 9 of the Act was issued.

3) The respondent Collector, on the basis of the material available before him and after taking into account the rate at which the adjacent land for judicial complex and media complex, was acquired, assessed the market value of the acquired land @Rs.80,000/ per kanal. Accordingly, the impugned award dated 30.11.1999, came to be passed by the Collector.

4) It seems that respondents No.1 and 2, who claim to be the owners of a portion of the acquired land measuring 18 marlas under Khasra No.3145/2496, 3146/2496 and 1 kanal 13 marlas under Khasra No.2492-min situated at Kupwara Town, felt dissatisfied with the award of the Collector and they made an application under Section 18 of **the Act** before the Collector. Pursuant thereto,

reference was made by respondent Collector to learned District Judge, Kupwara (hereinafter referred to as “the Reference Court”).

5) The respondent Collector did not contest the reference before the Reference Court whereas the appellant herein filed its objections to the application of the land owners/ respondents No.1 and 2.

6) Vide order dated 04.08.2003, the learned Reference Court framed the following issues:

- (I) Whether the compensation assessed by the Collector Land Acquisition is not in consonance with the provisions of law and not according to the market value of the land ? OPP*
- (II) If issue No.1 is decided in affirmative, what was the market rate of the land acquired at the time the notification was issued? OPP*
- (III) What is the amount of compensation to which the petitioners are entitled to? OPP*

7) During trial of the case, the land owners/ respondents No.1 and 2 examined two witnesses, namely, Ghulam Hassan Malik and Mohammad Sultan Malik, in support of their case whereas Aijaz Abdullah, Assistant Commissioner, Kupwara, appeared as a witness on behalf of the Collector before the Reference Court.

8) The learned Reference Court, while deciding issue No.1, observed that the Collector has taken into consideration the compensation awarded in the year

1996-1997 and has also taken into account cost of the land situated at Bumhama which is about one kilometer away from the acquired land, as such, the market value of the land assessed by the Collector cannot be accepted. It has also been observed that Rule 47 of the Land Acquisition Rules has not been followed by the Collector. While deciding issue No.2, the learned Reference Court has concluded that the land owners have failed to prove the market value of the acquired land. However, while deciding issue No.3, the learned Reference Court came to the conclusion that market value of the land in question is Rs.1.20 lacs per kanal as the land in question has commercial value and the same is irrigated. Accordingly, compensation in favour of respondents No.1 and 2/land owners has been enhanced from Rs.80,000/ per kanal to Rs.1.20 lacs per kanal.

9) The appellant has challenged the impugned award/judgment passed by the Reference Court on the grounds that in spite of respondents No.1 and 2/land owners having failed to produce any material to substantiate their claim that market value of the acquired land was more than what has been assessed by the Collector, the learned Reference Court has enhanced the amount of compensation. It has been contended that the

learned Reference Court on one hand has held that the interested persons/land owners have failed to discharge their burden of proving issue No.2 but on the other, market value of the land has been enhanced to Rs.1.20 lacs per kanal without any evidence in this regard.

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

11) At the very outset, learned counsel for respondents No.1 and 2 has raised a preliminary objection to the maintainability of the appeal on the ground that an appeal or suit on behalf of a State can be filed only by following the mandate of Section 79 of the CPC which provides that a suit by or against the Government, the Authority to be named as plaintiff or defendant should be State of J&K but in the instant case the appeal has been filed by Notified Area Committee, Kupwara, through its Administrator, which is not maintainable.

12) The argument urged by learned counsel for respondents No.1 and 2 is bound to be rejected for the reason that the present appeal has not been filed by the State but it has been filed by the Indenting Authority i.e. Notified Area Committee, Kupwara, which is a statutory

Authority constituted in terms of the Jammu and Kashmir Municipal Act, Samvat 2008. Being a statutory Authority, it has a distinct identity from the State of J&K, as such, the provisions contained in Section 79 of the CPC do not apply to the case of the appellant. The appeal is, accordingly, held to be maintainable.

13) That takes us to the merits of the appeal. The issue which falls for determination in the present appeal on the basis of the grounds urged by the appellant is ‘as to whether respondents No.1 and 2/land owners have succeeded in proving before the learned Reference Court that the market value of the acquired land was more than what has been assessed by the Collector and if so, what was the actual market value of the land in question on the relevant date?’

14) In the above context, we have to analyse the evidence that has been led by respondents No.1 and 2 before the learned Reference Court. It is pertinent to mention here that the learned Reference Court, while passing the impugned award, has not even referred to the statements of the witnesses recorded by the land owners.

15) Two witnesses, whose statements have been recorded by the respondents/land owners before the

learned Reference Court, are Ghulam Hassan Malik and Mohammad Sultan Malik. While both these witnesses in their examination-in-chief have stated that the acquired land is located on the roadside near petrol pump adjacent to the Dak Bungalow having commercial value, they have also stated that the market value of the land in question in the year 1999 must have been around Rs.20.00 lacs per kanal. But in their cross examination, both these witnesses have stated that they have not purchased or sold any land in the area. While PW Ghulam Hassan Malik has stated that he has no idea as to what would be the value of the land, PW Mohammad Sultan Malik has stated that he does not know whether any land in the vicinity of the acquired land has been sold.

16) From the statements of aforesaid two witnesses, it is clear that none of them have either sold or purchased any land in the vicinity of the acquired land. Their assessment of the market value of the land in question is not based upon their personal knowledge. The same is only based upon guesswork on their part.

17) It is a settled law that burden to prove that market value of the acquired land is different from the market value assessed by the Collector is upon the land owners who are seeking enhancement of the compensation. The

Supreme Court has, in the case of **Land Acquisition Officer v. Sidapa Omana Tumari**, 1995 Supp. (2) SCC 168, while answering the question as to upon whom the burden of proving that compensation awarded by Collector is inadequate, observed as under:

When the Collector makes the reference to the Court, he is enjoined by section 19 to state the grounds on which he had determined the amount of compensation if the objection raised as to the acceptance of award of the Collector under section 11 by the claimant was as regards the amount of compensation awarded for the land thereunder. The Collector has to state the grounds on which he had determined the amount of compensation where the objection raised by the claimant in his application for reference under section 18 was as to inadequacy of compensation allowed by the award under section 11, as required by sub-section (2) of Section 18 itself. Therefore, the legislative scheme contained in Sections 12, 18 and 19 while on the one hand entitles the claimant not to accept the award made under section 11 as to the amount of compensation determined as payable for his acquired land and seek a reference to the court for determination of the amount of compensation payable for his land, on the other hand requires him to make good before the Court the objection raised by him as regards the inadequacy of the amount of compensation allowed for his land under the award made under section 11, with a view to enable the Court to determine the amount of compensation exceeding the amount of compensation allowed by the award under Section 11, be it by reference to the improbabilities inherent in the award itself or on the evidence aliunde adduced by him to that effect. That is why, the position of a claimant in a reference before the Court, is considered to be that of the plaintiff in a suit requiring him to discharge the initial burden of proving that the amount of compensation determined in the award under section 11 was inadequate, the same having not been determined on the basis of relevant material and by application of correct principles of valuation, either with reference to the contents of the award itself or with reference to other evidence aliunde adduced before the Court. Therefore, if the initial burden of proving the amount of compensation allowed in the award of the Collector was inadequate, is not discharged, the award of the Collector which is made final and conclusive evidence under section 12, as regards matters contained therein will stand unaffected. But if the claimant succeeds in proving that the amount determined under the award of the Collector was inadequate,

the burden of proving the correctness of the award shifts on to the Collector who has to adduce sufficient evidence in that behalf to sustain such award. Hence, the Court which is required to decide the reference made to it under section 18 of the Act, cannot determine the amount of compensation payable to the claimant for his land exceeding the amount determined in the award of the Collector made under section 11 for the same land, unless it gets over the finality and conclusive evidentiary value attributed to it under section 12, by recording a finding on consideration of relevant material therein that the amount of compensation determined under the award was inadequate for the reasons that weighed with it.

18) A similar view has been taken by the Supreme Court in the case of **Major Pakhar Singh Atwal vs. State of Punjab**, 1995 Supp (2) SCC 401.

19) In **Ramanlal Deochand Shah vs. State of Maharashtra and another**, (2013) 14 SCC 50, the Supreme Court has held that so long as the land owner owners fail to discharge the burden cast on them, there is no question of Reference Court granting any enhancement.

20) In the instant case, as already discussed, the evidence led by the land owners before the Reference Court is not reliable and, as such, it cannot be stated that the land owners have discharged their burden of proving that the market value of the land assessed by the Collector is not correct. The statements of the witnesses who have not actually entered into any transaction with regard to the land in the vicinity of the acquired land during the relevant

period, do not bear any evidentiary value and the assessment of the market value made by such witnesses cannot be relied upon by a Court.

21) The learned Reference Court in spite of holding that the land owners have failed to discharge their burden of proof has proceeded to enhance the compensation by fixing the market value of the acquired land at a higher rate which is contrary to its own finding. The impugned judgment of the learned Reference Court is, therefore, liable to be set aside on this ground alone.

22) Apart from the above, if we have a look at the material on record, it comes to the fore that the assessment of the market value made by the Collector in respect of the land in question is based upon sound legal principles. It has come in the evidence on record that the acquired land of respondents No.1 and 2 is situated adjacent to the Court complex. The Collector has noted that the land for the Court complex was acquired in the year 1996 by fixing the market value @Rs.57,000/ per kanal. In the instant case, the declaration under Section 6 of **the Act** was issued in the year 1999. In the absence of any material with regard to the market value of the acquired land, the Collector was right in taking the market value of the land acquired for the purpose of construction of court complex as the basis

for assessing the market value. If we give a 10% increase every year to the market value assessed for the land acquired for construction of the Court complex, it would work out to around Rs.75,000/ per kanal in the year 1999. In the instant case, the Collector has assessed the market value of the acquired land @Rs.80,000/ per kanal, which represent the approximate market value of the acquired land on the date of issuance of declaration under Section 6 of **the Act**. Therefore, there was no occasion for the learned Reference Court to discard the market value of the acquired land assessed by the Collector.

23) For the foregoing reasons, the impugned judgment/award passed by the learned Reference Court is not sustainable in law. The same is, accordingly, set aside and the award of the Collector is upheld.

24) Copies of this judgment be sent to the Collector as well as to the Reference Court for information. The record of Reference Court be also sent down.

(Sanjay Dhar)
Judge

Srinagar,
07.06.2024
“Bhat Altaf-Secy”

Whether the order is reportable: **Yes/No**