

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

WP(C) No. 1528/2023
CM No. 3642/2023

**Mohan Singh, Age 81 years
S/o Late Sh. Panna Lal
R/o Village Kundarorian,
Tehsil Katra & District Reasi.**

....Petitioner(s)/Appellant(s)

Through :- Mr. F.A. Natnoo, Advocate

V/s

1. **UT of J&K** Respondent(s)
Through Commissioner Secretary to Government
Housing and Urban Development Department
J&K Government Civil Secretariat
Jammu/Srinagar.
2. **Deputy Commissioner**
Reasi.
3. **Sub Divisional Magistrate**
(Collector Land Acquisition)
Katra.
4. **Chief Executive Officer**
Katra Development Authority
Katra.
5. **Chief Executive Officer**
Municipal Committee
Katra.

Through :- Mr. S.S. Nanda, Sr. AAG
Mrs. Monika Kohli, Sr. AAG

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

ORDER(ORAL)
22.12.2023

01. Through the medium of instant petition, the petitioner has sought the following relief:-

“i)Writ of Certiorari; quashing the communication no. SDM/K/CLA/2023-23/18-20 dated 13-04-2023 issued by the respondent no. 3 whereby respondent no. 3 instead of declaring the process of acquisition in respect of land measuring 01 kanal 10

marlas 01 sarsai under Khasra no. 56 min belonging to the petitioner land measuring 01 kanal 10 marlas 01 sarsai under Khasra no. 56 min as having lapse has further sought instructions from the respondent no. 2, when the respondent no. 2 otherwise have no such authority to look into the same.

ii) Writ of Mandamus; commanding the respondents to clear the building permission case of the petitioner for which the necessary NOC has since been issued by all the authorities and is now unnecessary being withheld without any legal justification.

iii) Writ of Prohibition, restraining the respondents, more particularly respondent no. 2 and respondent no. 3 from conducting any further proceeding in respect of land measuring 01 kanal 10 marlas 01 sarsai under Khasra no. 56 min which got illegally involved in the acquisition process earlier though the same was de-notified under the orders of the competent authority and subsequent process may further kindly be declared to have lapsed.

iv) Any other writ, order, command or directions which this Hon'ble Court may deem just and proper in the given facts and circumstances of the case may also be passed in favour of petitioner and against the respondents."

02. The petitioner through the medium of the instant petition has called in question the communication No. SDM/K/CLA/2023-23/18-20 dated 13.04.2023, by virtue of which clarification has been sought by the Collector Land Acquisition, Katra from Deputy Collector, Reasi vis-à-vis the left out land of the petitioner measuring 1 Kanal 10 Marlas 1 sarsai under Khasra No. 56 min under land acquisition for the construction of New Bus Stand and approach Katra at Kundarorian, Katra.

03. Learned counsel for the petitioner submits that the petitioner by way of second round of litigation, has filed the instant writ petition before this Court seeking exemption of his land measuring 1 kanal 10 marlas 1 sarsai under Khasra No. 56 min situated at Village Kundarorian from the acquisition.

04. He further submits that the petitioner in the instant petition is aggrieved of the communication dated 13.04.2023, impugned in the instant petition whereby

respondent No.3 instead of taking and considering the acquisition process as closed and lapsed in respect of land measuring 01 kanal 10 marals 01 sarasi under khasra no. 56 min situated at village Kundarorian, the respondent no. 3 has illegally and arbitrarily referred the matter to respondent no. 2 for further instructions. The further case of the petitioner is that though admittedly, the award in respect of patch of land measuring 411 Kanals 15 Marlas 1½ sarsai has been issued and the possession in respect of the said patch of land has been handed over to the Katra Development Authority in the year 2010, yet the patch of land measuring 1 kanal 10 Marlas 1 Sarasi of Khasra No. 56 min is owned and in possession of the petitioner and the said patch of land has been illegally involved in the process of acquisition, as the same was already de-notified by the competent authority i.e. Government Revenue Department. The petitioner is also aggrieved of the inaction on part of the authorities in not considering and finalizing the case of the petitioner for the purpose of grant of building permission, though all the formalities viz. requisite NOC's from all the departments, have been issued and, thus, the aforesaid action and inaction violates the legal, fundamental and statutory rights of the petitioner.

05. The foundation in the aforesaid writ petition was that since the petitioner is in possession of the land in question, the earlier notification under Section 4 of the Land Acquisition Act was issued in respect of land measuring 547 Kanal 6 ½ Marlas, in terms of the corrigendum to the said notification No. 191-RD of 1997, 1 kanal and 18 Marlas of land covered by Khasra No. 56 min was de-notified, but the specific case of the petitioner in the earlier round of litigation was that in terms of Section 4 of the Land Acquisition Act dated 14.11.2009, the land of the petitioner

was again notified for acquisition which prompted the petitioner to file the said writ petition on the ground that the petitioner was not provided any liberty to file objections which was violative of his right.

06. The further case of the petitioner in the said writ petition was that notification issued under Section 4 and other notifications issued by the Collector were also subject matter of many other writ petitions with the lead writ petition bearing No. OWP 1239/2010 decided on 07.09.2011. However, the Court did not find any fault with the said notification issued under Section 4 of the Land Acquisition Act, but the declaration under Section 6 and notifications issued under Section 9, 9 (a) and 17 were held to be invalid. In the said writ petition, the respondents were directed to provide an opportunity of hearing to the petitioners therein as mandated under Section 5 (a) of the Land Acquisition Act, which was in vogue at that relevant point of time, thereafter respondents were directed to frame the report and make recommendations in respect of the objection by submitting the same to the Government. Accordingly, the Government was given an opportunity to take a decision in the matter, which was binding on the petitioners, therein. The matter later on, came before the Division Bench of this Court in batch of LPAs and the judgment of the learned writ court was upheld with some modifications.

07. The learned Writ Court while allowing the writ petition filed by the petitioner bearing no. OWP 1556/2010 in the earlier round of litigation has recorded a finding that it is the duty of the Collector to afford an opportunity to file objections and to hear the petitioner after notification under section 4 is issued. The learned Writ Court further observed that under Section 5 (a) of the Land Acquisition Act constitutes the soul of the said Act and denying such right as

mandated in the said Section would result not only the breach of the said provision of the statute, but also Constitutional Right to uphold the movable property, which is guaranteed under Article 19 (1) of the Constitution of India.

08. In the aforesaid backdrop, the writ petition was disposed of in the following manner:-

“By issuance of writ of certiorari, the declaration under Section 6 and Notifications under Sections 9, 9(a) and 17 of the State Land Acquisition Act to the extent of petitioner are quashed. Respondents are directed to proceed in the matter in accordance with law contained in the State Land Acquisition Act. Petitioner is directed to file objections within two weeks from today before the Collector to the Notification issued under Section 4 of the State Land Acquisition Act and the Collector concerned is directed to proceed in the matter in accordance with the law contained in Section 5(a) and related applicable provisions.”

It is further provided that the possession of the land of the petitioner shall be taken strictly in accordance with the provision of State Land Acquisition Act. “

09. Mr. F.A Natnoo, learned counsel for the petitioner has vehemently argued that the order passed by this Court, which has assumed its finality till date, has not been complied with by the respondents and feeling aggrieved of the same, the petitioner has filed the instant petition. He further submits that in spite of the fact that the final award has been issued vide letter No. SDM/K/CLA/2023-24/05-11 dated 11.04.2023, which specifically provides that the Collector Land Acquisition (Sub-Divisional Magistrate), Katra has issued the final award of new Bus Stand Katra Vide Letter No. SDM/K/CLA/2023-24/05-11 dated 11.04. 2023 excluding the land measuring 1 Kanal 10 Marlas 1 sarsai under Khasra No. 56 min. The communication, which has been challenged in the present petition, specifically provides that Katra Development Authority has already signed a Memorandum of Understanding (MoU) that the Logistic Management Wing of National Highway Authority of India for development of Inter Model Station at Katra on 25 acres of

land. The communication further reveals that the final award has been issued by the Collector, which excludes the land of the petitioner and, thus, according to learned counsel for the petitioner, it was not incumbent on the part of Collector, who has sought any guidance from the Deputy Collector, Reasi for the necessary action in so far as the land of the petitioner is concerned.

10. He further submits that it has been conclusively held in the aforesaid communication that the final award has been passed excluding the land of the petitioner, then, there was no necessity of seeking any further guidance which according to Mr. F.A. Natnoo, learned counsel for the petitioner, lead to the irresistible conclusion that the land has been left out from the Acquisition proceedings and, thus, the respondents by no stretch of imagination can create an obstacle for using the said land by the petitioner.

11. He further submits that he has already applied for no objection for carrying out the residential construction of his house in the aforesaid land which was denied by the respondents on the pretext that no proceedings have been carried by the respondents till date in furtherance of the direction passed by this Court in OWP No. 1556/2010.

12. *Per contra*, Mr. S.S. Nanda learned Senior AAG appearing on behalf of respondent Nos. 1, 4 and 5 submits that since the final award has been issued and the land of the petitioner has been excluded from the acquisition proceedings, the stand of the petitioner stood vindicated and, thus, there was no cause of action for the petitioner to file the instant petition.

13. He further submits that the communication which is impugned in the instant petition is in fact in favour of the petitioner which holds that the land of the

petitioner is outside the scope of the acquisition and has not been acquired for the said purpose and thus, there was no cause of action for filing the instant petition.

14. Mr. S.S. Nanda Learned Senior AAG fairly concedes that till date the objections filed by the petitioner has not been accorded any consideration and this is precisely the reason the formal permission/NOC has not been given to the petitioner. However, Mrs. Monika Kohli learned senior AAG appearing on behalf of respondent Nos. 2 and 3 adopts the reply and arguments advanced by Mr. S.S Nanda Learned Senior AAG.

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

16. Since the instant petition is by way of second round of litigation as the petitioner has filed a writ petition before this Court which was registered as OWP No. 1556 of 2010 and was decided by this Court on 05.09.2012, wherein the respondents were directed to proceed in the matter in accordance with law contained in the land Acquisition Act and the petitioner was granted two weeks time to file objections before the Collector to the notification issued under Section 4 of the Act and the Director concerned was directed to proceed in the matter in accordance with law contained in Section 5 (A) and related applicable provisions.

17. While parting with the aforesaid judgment, the learned writ Court has directed that the possession of the land of the petitioner shall be taken strictly in accordance with the provision of the State Land Acquisition Act which was in vogue at that relevant point of time. It is specific case of the petitioner that he has filed detailed objections within stipulated time frame granted by this Court before the Collector and the petitioner has also been heard on 17.09.2012 and yet no

formal decision has been taken by the respondents strictly in tune with the order/judgment passed by this Court.

18. Since the communication which is impugned in the present petition was issued on 11.04.2023 which excludes the land of the petitioner measuring 1 kanal 10 Marlas 1 sarsai under Khasra No. 56 min, the respondents by no stretch of imagination can raise any legal impediment for using the land of the petitioner or raising the construction in case all the requisite formalities as envisaged under law are completed and No Objection Certificates (NOCs) obtained by the petitioner. The respondents are under legal obligation qua the petitioner to take a decision in pursuance to the order passed by this Court mentioned (Supra) which till date has not been done and the respondents were again required to issue a formal order of de-notification of the land in question of the petitioner, as it has been done prior to the filing of the said writ petition bearing No. OWP 1556/2010 by virtue of corrigendum No. 191-RD of 1997.

19. The instant writ petition in the aforesaid backdrop is disposed of at this stage by directing respondent No. 3 to take formal decision of de-notifying the land of the petitioner measuring 01kanal, 10 marlas 01 sarsai under Khasra No. 56 min at village Kundrorian and take a formal decision in conformity with the order/judgment passed by this Court dated 05.09.2012 in OWP No.1556/2010 within a period of six weeks from the date copy of this order along with writ petition and annexures are made available to the respondents.

20. Needless to say that while granting consideration, the respondents have to give due weightage to the fact that the final award has already been issued vide No. SDM/K/CLA/2023-24/05-11 dated 11.04.2023 which finds mention in the

communication impugned dated 11.04.2023 excluding the land measuring 1 kanal 10 marlas 1 sarsai under Khasra No. 56 min belonging to the petitioner. Let the said decision be taken within the aforesaid period and conveyed to the petitioner by registered post. It is made clear that in case if the aforesaid decision goes against petitioner, petitioner will be at liberty to challenge the same by way of appropriate proceedings, if so advised.

21. The writ petition is *disposed of*, alongwith connected application, in the manner indicated above.

22. Since the decision was required to be taken by the respondents within the time frame granted by the Court when the Land Acquisition Act was in vogue and now with the efflux of time, Land Acquisition Act has been repealed and the new Act i.e., Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has come into force and this aspect of the matter be also looked into while according consideration and the respondents are directed to take a decision in the instant case in conformity with the provisions of the aforesaid Act which is in vogue.

(WASIM SADIQ NARGAL)
JUDGE

Jammu:
22.12.2023
Mihul

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