

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

Reserved on: 27.02.2023.

Pronounced on: 10.03.2023.

WP(C) No. 2355/2021
CM No. 6211/2022,
CM No. 8284/2021

Inhabitants of Village Plangarh Kote
Thanamandi Rajouri

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

Through :- Mr. Sheikh Najeeb, Advocate.

V/s

Union Territory of J&K and Others

....Respondent(s)

Through :- Mr. Vishal Sharma, DSGI.
Mrs. Monika Kohli, Sr. AAG
Mr. Ajaz Chowdhary, Advocate.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE**

JUDGMENT

TASHI RABSTAN, J:

1. In this petition which has been filed in the representative capacity, the petitioner inter alia has prayed for the following reliefs:

“Certiorari, Quashing Order No.Coll/Def/2021/1216-2020 dated 15.09.2021 issued by the respondent No.5 towards the implementation of Order/Judgment dated 13.08.2021 passed by this Hon’ble Court in WP(C) No. 1621/2021 rejected the case of the petitioner in a mechanical manner on misconceived notion.

Mandamus:

i) Commanding the respondents to construct the road from Rajouri to Thanamandi strictly as per original indent/DPR whereby width of the road has been sanctioned as 24 Meters throughout.

ii) Commanding the respondents not to reduce the width of the road from 24 Meters to 12 Meters within kms 12.910 to Kms 17.680 which

area caters to the villages of Plangarh, Kote, Badakhana and Khabala as decided by the respondents by virtue of impugned order.”

2. Brief facts which lead to the filing of the present writ petition are that the Border Roads Organization undertook the task of widening/four laning of Rajouri-Thanamandi Surankote Road having the length of approximately 57 Kms. Due to socio-economic development in the area the traffic has considerably increased and the said road was in deplorable condition having big potholes throughout Rajouri to Thanamandi causing grave hardships and inconvenience to the civilians and Military and accordingly the proposal/indent for improvement and widening/double laning of the road was placed initially from Kms 3.900 to 25.200 on 24.07.2019 before the Revenue Authorities for the acquisition of land. Some of the land owners in order to get their lands out of purview of acquisition filed a writ petition bearing No. WP(C) No. 4193/2009 before this court and the said writ petition was disposed of by virtue of judgment/order dated 15.11. 2019 with an observation that in case the process initiated for acquisition of land under the Land Acquisition Act, 1999 is to proceed further, the land owners shall be afforded opportunity of hearing in support of the objections filed by them under Section 5A of the Act. The respondents under the garb of the order dated 15.11.2019 solely to confer undue benefit upon decided to change the alignment of the road by reducing the width from 24 Mtrs to 12 Mtrs within km 12.910 to Km 17.680. The respondent No.4 by virtue of communication No. 8290/CE(P) SPK-15/2017-18/73/ E8 dated 10.01.2020 informed the decision of reducing the width of the road to the respondent No.6 who in turn wrote a communication No. Coll/Def/2020/1283-85 dated 11.01.2020 to the Tehsildar Thanamandi with a request to prepare fresh revenue papers of the subject villages with 12 Mtrs width from the proposed centre line with 6 Mtrs on both side to proceed further in the matter. The local

inhabitants at large passed a resolution condemning the aforesaid act of reducing the width of road and presented a writ petition before the court bearing WP(C) No. 1621/2021 challenging the aforesaid action of the respondents. The said writ petition came upon for consideration before the court on 13.08.2021 and on the said date the same was disposed of with a direction to the respondents to consider and decide the Legal Notice served by the petitioner/local inhabitants.

3. Thereafter towards the implementation of order dated 13.08.2021 passed by the court, the respondent no.5 had issued the impugned order No. Coll/Def/2021/1216-20 dated 15.09.2021 by rejecting the case of the petitioner.

4. Learned counsel for the petitioner submitted that the petitioner is aggrieved of the impugned order dated 15.09.2021 issued by the Respondent no.5 as the same has been passed in mechanical and arbitrary manner on misconceived notion.

5. It is further the submission of learned counsel for the petitioner that the respondents on asking of some vested interests have decided to reduce the width of Rajouri-Thanamandi Road from 24 Mtrs to 12 Mtrs from Kms 12.910 to 17.680 catering to the aforementioned villages in connivance with the respondents solely to keep their land out of purview of acquisition.

6. It is further the submission of learned counsel for the petitioner that due to socio-economic development in the area the traffic has considerably increased and the said road was in deplorable condition having big potholes throughout Rajouri to Thanamandi causing grave hardships and inconvenience to the civilians and Military and accordingly the proposal/indent for improvement and widening/laning of the road was placed initially from Kms. 3.900 to 25.200 on 24.07.2019 before the Revenue Authorities for the acquisition of land.

7. Heard learned counsel for the parties and perused the objections filed by the official as well as private respondents.

8. The stand taken by the respondents 2, 3 and 4 that the Road Rajouri-Thanamandi-Surankot having a length of 56.917 Km was originally constructed by MES and subsequently handed over to BRO during 1971. The road was included in the BRDB programme vide BRDB letter No. F(1)/BRDB Proj/64 dated 20 Aug 1971. The responsibility for improvement of this road from Km 3.900 to Km 22.200 has been entrusted to 58 RCC/31 BRTF (GREF) under project Sampark.

9. The road in question is an important road axis which connects to both Civil and Military traffic of District Rajouri. Besides, this road is important from strategic point of view as it joins border district Rajouri and Poonch to Kashmir valley through Mughal Road.

10. It is further averred that the existing Cl-9 Road was not found adequate for increased traffic, as such, upgradation of this road to National Highway Double Lane specification was felt essential to provide ease of accessibility of local population. Accordingly, a proposal for upgradation of existing CL-9 road to NHDL specifications from KM 3.900 to KM 56.915.

11. It is further averred that notification under Section 4(1) of the Land Acquisition Act, 1990 for acquisition of land situated in Village Kote, Plangarh & Khablan for the public purpose namely widening of Rajouri-Thanamandi road was issued vide CLA (Def) Rajouri vide letter No. Coll/Def/2019-20/895-99 dated 16.10.2019, Coll/Def/2019-20/869-73 dated 16.10.2019 and Coll/Def/2019-20/905-909 dated 16.10.2019.

12. It is averred that in compliance to order dated 13.08.2021 passed in WP(C) No. 1621/2021, respondent had passed detailed speaking order on

07.09.2021. It is averred that after detailed analysis by the Officer Commanding, 58 RCC (GREF), it was found that, now in present acquisition proceedings, Final award under Sections 9 and 9A of the Land Acquisition Act has already been issued.

13. It is further contended in the objections that the petitioner's plea to increase the width of the road from 12 Meters to 24 Meters within Kms 12.910 to Kms 17.960 is not possible. The acquisition in question has already been completed and the site has also been handed over to the contractor for execution.

14. The other respondent-Collector Land Acquisition in his response contended that the respondents in compliance to the aforementioned directions passed by this court in an earlier round of litigation have conducted thorough enquiry into the matter and thereafter the Collector after considering all the facts and factual position in the case in hand passed a detailed speaking order dated 15.09.2021.

15. It is further averred in the objections filed by the Collector that as per the spot position as well as report furnished by the indenting department and taking into account the technical aspects involved, collector land acquisition defence (respondent no.6 herein) vide No. Coll/Def/2020/1283-85 dated 11.01.2020 issued directions to the Tehsildar Thanamandi to prepare afresh revenue papers of the subject villages with 12 Mtr width from the proposed Centre Line with 6 Mtr on both sides from KM 12.910 to KM 17.680 (Existing Chainages) and on receipt of afresh revenue papers, further proceedings as mandated under the J&K Land Acquisition Act were initiated thereby issuance of Notification u/s 4(1), 6 & 7 & 9 & 9(a) in which the land owners/petitioners were afforded reasonable and sufficient opportunity to file objections, if any, with regard to the land to be acquired, the quantum, amount of compensation and

measurement of land in question. However, despite acknowledging the service of notices, the petitioners/land owners have not raised any objection at that time. Accordingly, the land in question was acquired strictly as per the provisions contained in the land Acquisition Act by issuance of Final Award.

16. In the objections filed by the private respondents, it is contended that the petitioners are encroachers of the land owned by Irrigation Department and accordingly the Irrigation Department on 23.04.2022 and 20.06.2022 issued notices to the petitioners for removing the encroachment upon the irrigation canal. Further, on 19.01.2023, again notices issued against the petitioner Mir Baz and other persons to remove encroachment upon the land of irrigation department and other land which comes under the alignment of the road. Thus, the petitioners with malafide intentions and in order to stall the process of acquisition, have filed present petition with ulterior motives.

17. In view of the above, we are of the opinion that the court cannot on its own adjudicate as to whether the road alignment as proposed by the technical team is feasible or not as the official respondents have examined the issue and found the objections raised by the petitioners technically not feasible. Courts are not equipped to decide upon the issues relating to the viability and feasibility of the particular project, which in fact are the technical matters and the decision is taken by people equipped with the necessary expertise. To decide as to on which side of the road, the land should be acquired, the court cannot super impose its opinion in the matter. Any interference in the case would delay the strategic project. The allegations of malafides alleged by the petitioner qua the whole process of acquisition and road widening also has been very well dealt with by respondent no.5, Deputy Commissioner, Rajouri leaving no scope for this court to intervene and interfere thereto.

18. Again, it is worth reiterating that the consistent view of the constitutional courts in the matters of land acquisitions has been that the viability or feasibility in the process of acquisition does not fall with the domain of courts unless it exfacie is found to be contrary to law or is tainted with palpable malafides. Reference in this regard to the judgment of the Apex court titled as *"State of UP and Ors Vs. Johri Mal* reported in (2004) 4 SCC 714.

19. For the reasons mentioned above and keeping in view the law laid down by Hon'ble the Supreme Court on the issue, we do not find any case is made out to interfere in the present petition and the same is accordingly dismissed.

20. No order as to costs.

Jammu:
10.03.2023
Raj Kumar



Whether the order is speaking?	Yes
Whether the order is reportable?	Yes