

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

COD No.1044/2023 & RP No.16/2023

Villagers of Kanli Bagh Baramulla

.....Petitioner(s)

Through: Mr. B.A.Misri, Advocate

V/s

State of J&K and Others

..... Respondent(s)

Mr. Alla-ud-din Ganie, AAG

Mr.Jahangir Ahmad Dar, GA

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

26.12.2023

Sanjay Dhar-J

CM No.1044/2023:-

1a. No reply has been filed by the respondents despite availing a number of opportunities. Having gone through the averments made in the application, we are satisfied that the review petitioners have carved out a case for condonation of delay in filing the review petition.

2a. Accordingly, the application is allowed and the delay in filing the review petition is condoned.

3a. Application disposed of.

RP No.16/2023 in OWP No.2084/2018:

1. By virtue of the present review petition, the writ petitioners are seeking review of judgment dated 15.02.2022, passed by this Court in the writ petition bearing OWP No.2084 of 2018.

2. The facts leading to filing of the instant petition are that the review petitioners had filed a writ petition before this Court challenging the proceedings by the Collector for acquiring land for construction of Housing Colony at Sangri Baramulla. Challenge was also thrown to tentative award dated 17.03.1998 passed by the Collector. The petitioners further sought a direction upon the respondents to initiate fresh acquisition proceedings under Section 4(1) of the J&K Acquisition Act and to pay compensation to the petitioners as per the market value.
3. In the writ petition no counter affidavit was filed by the respondents, as a consequence whereof, the writ court on the basis of the pleadings filed by the writ petitioners and the documents placed on record by them alongwith the writ petition, passed the judgment under review and issued the following directions:-

“28. In view of the above, the villagers may not be entitled to any of the reliefs specifically claimed in the present writ petition, nonetheless, in view of the residuary prayer to grant any other relief that may be deemed fit and suitable for the court and the power of the court to mould the relief so as to do justice to the parties, the court is left with no option but to make the interim mandamus absolute by issuing a writ in the nature of mandamus commanding the State authorities to frame and pronounce the final award in respect of the above acquisition in accordance with the existing law within a period of three months from the date a copy of this order is produced before the Chief Secretary and we hope that the Chief Secretary under whom all the departments of the State function, would take positive action in the matter and see to it that the award as directed is passed and stiff action is taken against all those officers, who were involved and responsible for not allowing the award to be passed immediately after the tentative award had been prepared and announced.

29. The villagers would be entitled to and paid compensation according to the final award along with all statutory benefits including the interest within a period of one month of the pronouncement of the final award after adjusting the amount which had already been paid to them under the tentative award.”

4. The petitioners have filed the instant review petition, primarily, on the ground that after passing of the judgment under review, the

Collector passed the final award and upon calculation of the figures the petitioners came to know that only 29.27% of assessed compensation has been paid to the petitioners, though as per the facts recorded in the judgment under review 75% of the compensation awarded under the tentative award has been paid to the land owners. It has been submitted that the final award has been passed by the Collector only on 01.09.2022, wherefrom the petitioners came to know about the aforesaid factual error that has crept into the judgment under review. On this basis it has been contended that without payment of 80% of the compensation assessed under the tentative award to the land owners, the acquisition proceedings lapsed in view of the fact that no final award was passed by the Collector within the period stipulated under Section 11B of the State Land Acquisition Act. It has been contended that these facts were not in the knowledge of the review petitioners at the time when the judgment under review was passed and the same have come to their knowledge very recently. Hence the impugned judgment deserves to be reviewed.

5. We have heard learned counsel for the parties.
6. Rule 65 of the Jammu and Kashmir & Ladakh High Court Rules, 1999 deals with the power of the High Court with regard to the review of a judgment. It reads as under:-

65. Application for review of judgment- The Court may review its judgment or order but no application for review shall be entertained except on the ground mentioned in order XLVII Rule 1 of the Code.”

7. From a perusal of the aforesaid provision, it is clear that a plea for review of a judgment can be entertained only on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure. Under the said provision review of a judgment can be made on the following grounds:-

- i) If it is shown by the aggrieved person that a new and important matter and evidence which, after exercise of due diligence was not within his knowledge or could not be produced by him, has been discovered;
- ii) If there is some mistake or error apparent on the face of record; and
- iii) For any other sufficient reason.

The expression "*For any sufficient reason*" has been interpreted by the Courts to mean a reason analogous to the first two reasons.

8. Coming to the instant case, the review petitioners claim that they were not in knowledge of the fact that only 29.27% of the compensation assessed under the tentative award had actually been paid to the writ petitioners and that they gathered knowledge about the same only when final award was passed by the Collector. On this ground it has been contended that acquisition proceedings in the absence of the final award had lapsed and that the writ court while passing the judgment under review has erroneously recorded that 75% of the award amount had been paid to the land owners.

9. If we have a look at the record of the writ petition, the petitioners have annexed a copy of tentative award dated 17.03.1998 as annexure D to the writ petition. In the said document the details of the amount assessed and the amount paid to the land owners have

been given. The relevant excerpts of the award is reproduced as under:-

1. Cost of 150 kanals-03 Marlas of land @ Rs.5000/- per kanal	Rs.7,50,750.00
2. 15%Jabirana	<u>Rs.1,12,612.50</u>
Total	Rs. 8,63,362.50
3. 45% of the assessed compensation including 15% of Jabirana has already been paid by Collector, Revenue and Rehabilitation Officer, Srinagar Development authorities, Srinagar during 8/1985	Rs.4,84,007.95
4. Amount thus payable	Rs.3,79,354.55

10.From the above it is clear that the documents annexed by the review petitioners alongwith their writ petition clearly indicated as to how much amount was received by the land owners and as to how much compensation was assessed under the tentative award. The contention of the review petitioners that they came to know about the actual amount that has been paid to the land owners and the actual amount that has been assessed as compensation only when the final award was passed, cannot be accepted in view of the documents placed by the writ petitioners alongwith their writ petition. In fact in the writ petition itself, the petitioners have, by referring to the various documents emanating from the official respondents put forward the stand of the said respondents, that 75% of the land compensation has been received by the land owners. In the writ petition the petitioners have no where disputed this fact. Therefore, it is not a case where the writ petitioners have come to know about the actual amount of compensation received by the land owners only after passing of final award, but it is the case where they were already having knowledge of these facts even when they had filed the writ petition. Thus, it cannot be stated that a new and important fact has come to the knowledge of

the review petitioners which was not within their knowledge at the time of passing of the judgment under review. Therefore, the ground urged by the review petitioners for seeking review of the impugned judgment is not made out.

11. On the basis of the material available on record before the writ court at the time of deciding the writ petition, whether it could have been held that the acquisition proceedings had not lapsed, is a question which can be raised by the review petitioners before the higher forum and not in a review petition against the order of writ court.

12. For the foregoing reasons, we do not find any ground to interfere with the judgment under review. The same is, accordingly, dismissed.

(SANJAY DHAR)
JUDGE

(N.KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR
26.12.2023
Sarveeda Nissar

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