

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

*CFA No. 09 /2018*

Reserved on : 21.12.2023

Pronounced on : 28.12.2023

- 1. General Manager Northern Railways New Delhi**
- 2. Executive Engineer S&C II Northern Railways  
Tulsibagh, Srinagar.**

.....Appellants (s)

Through: Mr. Nazir Ahmad Bhat, CGC.

**Versus**

- 1. Abdul Majeed Wani.**
- 2. Ahad Wani.**  
**Sons of Assad Wani**  
**Residents of Nehama Pulwama**

.....Respondent(s)

- 3. Collector Land Acquisition Northern Railway ( ACR)  
Pulwama.**
- 4. Managing Director M/s IRCON International Ltd. Srinagar.**

**( Proforma Respondents).**

Through: Mr.M.Y.Bhat, Sr. Adv.with  
Mr. Sajid Ahmad, Adv.for R-1 & 2.

**CORAM: HON'BLE MR JUSTICE M.A.CHOWDHARY, JUDGE**

1. The instant appeal is directed against the judgment/decreed dated 23.01.2018 passed by Principal District Judge, Pulwama ( hereinafter 'Reference Court' for short) in a Land Acquisition Reference U/S 18 of the Land Acquisition Act against the Final Award dated 23.07.2004 passed by the Collector Northern Railways ( ADC) Pulwama, in acquisition proceedings in terms of State Land Acquisition Act, for acquisition of land for Railway track in village Nihama of District Pulwama.
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2. The impugned judgment has been assailed on the grounds; that the judgment is legally untenable and erroneous insofar as the trial court has not appreciated the objections, pleadings and the evidence in its right perspective by coming to the conclusion that the respondents are entitled to compensation of Rs. 37,48,000/- inclusive of Rs. 21.00 lacs received by the respondents under protest with 15% Jabirana alongwith 6% interest from the date of acquisition, till payment of the entire awarded amount; that the compensation enhanced to Rs. 37,48,000/- is totally bad in law as against the expert opinion without meticulously examining the record pertaining to various opinions and final expert opinion rendered by Superintending Engineer PWD (R&B) Anantnag vide his communication No. 5713-15 dated 11.10.2021; that the final award has been passed in the year 2004 and compensation stands already received by the respondents in the same year, as such, the application filed by the respondents was time barred and ought to have been dismissed; that the award passed by the Collector was legal and sustainable as the same has been passed after following proper procedure in accordance with law; that the reasons for enhancing the compensation given by the Reference Court do not subscribe to the mandate of Section 23 of the Land Acquisition Act; that it is quite amazing to find out as there was no reason or evidence to pass the impugned judgment and finally it was prayed to allow the appeal and set

aside the impugned judgment/decreed passed by the Reference Court.

3. Learned Counsel for the appellant vehemently argued that the Collector while awarding compensation had granted an amount of Rs. 18,42,000/- for compensation of the poultry unit of the respondents situated at Village Nihama of District Pulwama which had been acquired based on the indent of the appellants Northern Railways, for railway project and alleged that the Reference Court without leading any evidence by the respondents/owners had enhanced the amount of compensation of this Poultry unit in favour of the respondents (herein) to an amount of Rs. 37,48,000/-. He has argued that the compensation had been got assessed by the Collector from Superintending Engineer PWD Circle Anantnag, which he had assessed at Rs. 18,42,000/- and against this expert assessment by an officer of the engineering department formulated by the Executive Engineer of PWD Division Pulwama, and approved by Superintending Engineer, Anantnag the amount had been accepted by the Collector at Rs. 18,42,000/- .
  4. He further argued that on a reference made on the application moved by the respondents to the District Court Pulwama, the reference court vide impugned judgment/decreed without assigning any reason in a mechanical manner, enhanced the compensation for the poultry unit of the respondents for an amount of Rs. 37,48,000/-. He argued that the appellants are aggrieved of the impugned judgment/decreed passed by the
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Reference Court in a mechanical and arbitrary manner without looking into the provisions of Section 23 of the State Land Acquisition Act which governs the principles and provides the mechanism for determination of compensation in respect of the acquisition made and certain valid points of consideration like market value at the time of notification; damages sustained at the time of taking possession; damages by reasons of separating such land from the other land; damages to the property movable or immovable or earnings; interested persons compelled to change residence or; diminution of profits.

5. Learned counsel for the appellants further submits that the Collector has very meticulously assessed the compensation passed on the aforesaid indicators/factors while as the Reference Court without any reasons and ignoring all these aspects enhanced compensation to more than double of the amount as has been assessed by the Collector for compensation being paid for the Poultry Unit of the respondents. He has finally prayed that the appeal be allowed and the judgment/decreed passed by the Reference Court be set aside and the final award passed by the Collector be upheld and restored with regard to acquisition of the poultry unit.
  6. Learned counsel for the contesting respondents/land owners, in rebuttal, argued that the contention of the appellants is that the amount of Rs. 18,42,000/- granted by the Collector as compensation for the Poultry Unit to its owners had been assessed by the Superintending Engineer PWD Circle
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Anantnag and Executive Engineer PWD Division Pulwama is not tenable and drawn attention of this court towards tentative award passed on 14.11.2000 by the Collector wherein it has been recorded on page 4 that the amount assessed for this Poultry Unit by the Executive Engineer R&B Division Pulwama vide his letter No. R-109/PW-3337-39 dated 31.08.2000 to the tune of Rs. **36.81** lacs which he intimated to the S.E.R&B Circle Anantnag. However, Superintending Engineer concerned vide his letter No. 4680-82 dated 28.9.2000 assessed the same structure to the tune of Rs. **37.48** lacs and this discrepancy of the amount assessed by both the officers had been pointed out to the SE R&B Circle Anantnag by Collector in his communication No. COLL/QB/RL/155/707-708 dated 10.10.2000 that the SE R&B Circle Anantnag vide his letter No. 7280-82 dated 31.1.2001 informed to have revaluated the said property to the tune of Rs. 35.41 lacs deducting cost of salvageable materials and further reported that the assessment has been made on the basis of rent schedule in vogue.

7. Heard learned counsel appearing for both the sides, perused the record and considered.
  8. As is revealed from the record, that during his visit Dy. Chief Engineer Northern Railways Udhampur observed that the assessment should be got re-examined by the Superintending Engineer concerned which was done and re-verified assessment was sent to Dy. Chief Engineer Northern Railway Udhampur vide his communication dated 27.3.2001 for his
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views/comments who vide his letter dated 7.5.2001 observed that the assessment of the structures has been examined by him and that he arrived to the conclusion that the assessment of the structure which he described as "Shed" comes to Rs. 15,85,704/- ( with material).

9. It appears from the record that in order to overcome this controversy, the Collector took up the matter with the Divisional Commissioner, Kashmir who desired to get the valuation re-examined through Chief Engineer R&B Kashmir. In pursuance of the order of Divisional Commissioner Kashmir the matter was referred to Chief Engineer R&B Kashmir for re-verification with the request to get the matter examined by a committee of Senior Engineers for revaluating the assessment made by the SE PWD Anantnag in which Assistant Executive Engineer Northern Railway Srinagar be associated as representative of the indenting department vide letter dated 11.06.2001 of the Collectorate and that this compensation so verified/re-assessed by the Chief Engineer PWD(R&B) Kashmir on its receipt for the said poultry unit will be reflected in the final award.

10. The Collector, however, without waiting for the re-assessment as was desired by the Divisional Commissioner Kashmir to be conducted by a committee to be constituted by Chief Engineer R&B, Kashmir passed the final award and granted compensation as per the assessment made by the Dy. Chief Engineer Northern Railways Udhampur which he had done at his office in Udhampur without visiting on spot and ignoring the

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report of the experts i.e. local Superintending Engineer and Executive Engineer Anantnag.

**11.** He has further argued that the Reference Court has decided the matter between the parties with regard to the compensation for the poultry unit after framing an issue based on the pleadings of the parties and after adducing evidence by both the sides and finally it was prayed that the reference court's judgment is perfectly in consonance with the law and does not call for any interference and prayed that the appeal be dismissed with costs and the impugned judgment/decreed will be upheld.

**12.** On consideration of the matter it has been found that the Collector while acquiring the property in question, took up the matter with the Executive Engineer R&B Division Pulwama for assessment of the poultry farm/unit of the respondent Nos. 1 & 2. who in his estimation, assessed the compensation for an amount of Rs. 36.81 lacs which he intimated to the Superintending Engineer R&B Circle Anantnag. The Superintending Engineer, however, vide his communication dated 28.9.2000 assessed the same structure to the tune of Rs. 37.48 lacs. On pointing out the discrepancy by the Collector the Superintendent Engineer R&B Circle Anantnag vide his letter dated 31.1.2001 revaluated the property for an amount of Rs. 35.41 lacs after deducting the cost of salvageable materials.

13. Dy. Chief Engineer Northern Railways Udhampur who was an officer of indenting department, during his visit observed that the assessment should be re-examined from the concerned Superintending Engineer and accordingly Collector intimated him vide letter dated 27.3.2001 about the revaluation by the SE concerned, however, the Dy. Chief Engineer Northern Railway arrived to a conclusion that the assessment of the structures which he described as "Shed" to an amount of Rs. 15,85,704/- lacs (with material). The Collectorate to overcome this controversy with regard to the assessment of the poultry unit of the respondents 1 & 2, took up the matter with the Divisional Commissioner, Kashmir who desired to get the valuation re-examined by a committee constituted by the Chief Engineer R&B Kashmir, comprising of Senior Engineers and associating the Assisting Executive Engineer Northern Railways Srinagar.
14. The Collector observed in its tentative award that the compensation so verified/re-assessed by the Chief Engineer R&B Kashmir for the said poultry unit will be reflected in the Final Award, on receipt of the requisite report from the Chief Engineer concerned. It appears from the record particularly on perusal of the final award that the Collector, without getting the re-evaluation done by the Committee to be constituted by the Chief Engineer, proceeded further in the matter and passed the final award, granting compensation assessed by the Dy. Chief Engineer Northern Railways Udhampur after adding 15%

Jabirana to the same and finally granted an amount of Rs. 18.42 lacs.

15. During the trial of the reference the poultry unit owners (respondents 1 & 2 herein), examined PW-Khalid Muzaffer who stated that in the month of October, 2001 Superintending Engineer Anantnag on request made by territorial Division R&B Pulwama constituted a team as the IRCON had raised objections that assessment has not been made as per the schedule with regard to the unit; that he had prepared an estimate on the basis of expert opinion which was approved by the Superintending Engineer. He further stated that he had prepared this report which had preferential value over the assessment already made by the territorial Division Pulwama and further deposed that assessment so made was as per the schedule and not as per the market value after a depreciation of 10%. He further deposed that the poultry sheds were permanent structures. It appears from the statement that he had prepared an estimate on seeking re-assessment by the Collector from Superintending Engineer. It is quite astonishing that the Collectorate relied upon an assessment made by an officer of the indenting department which was not permissible and had ignored the assessment made by the Public Works Department Engineers initially to the tune of Rs. 36.81 lacs by Executive Engineer and by SE R&B Circle Anantnag for an amount of Rs. 37.48 lacs and on re-valuation by him to an amount of Rs. 35.41 lacs.
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16. On perusal of the trial court judgment it appears that Reference Court without making any reference as to what persuaded it to enhance the compensation to an amount of Rs. 37.48 lacs from the amount granted by the Collector replied the reference.
17. Learned counsel for the appellants has not been able to show as to why appellants had not asked the Collector to withhold the award till re-valuation, of the property by a Committee of Senior Engineers, as had been desired by the Divisional Commissioner, Kashmir from Chief Engineer R&B Kashmir. The Collector in the considered opinion of this court had committed an error by ignoring the re-assessment of the value of the property for an amount of Rs. 35.41 lacs by the Superintending Engineer concerned and adopted the assessment made by an officer of the indenting department and without any application of mind.
18. Plaintiffs witness Khalid Muzaffar who had been examined by the petitioners before reference court, deposed that the revaluation report which was formulated by the Superintending Engineer R&B South Circle Anantnag and he has further stated that the assessment had been made by him after deducting the cost of salvageable material which was approved by the Superintending Engineer R&B Circle Anantnag and was submitted to the Collectorate. Instead of accepting the revaluation report and without waiting for any further re-assessment of the property as suggested by
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Divisional Commissioner, through office of Chief Engineer by a committee of Seniors Engineers after co-opting an officer of the indenting department, the Collector had proceeded further to pass final award, granted compensation with regard to the poultry unit as assessed by the officer of indenting officer of the department. Thus the Collector has misused the authority and passed the final award with regard to the property in question certainly require to be interfered with by the Reference Court. The Reference Court has thus rightly interfered in the final award with regard to the property in question. However, it appears the re-evaluation report formulated by the Superintending Engineer R & B Circle Anantnag had escaped attention of the Reference Court, whereby the property had been assessed for a value of Rs. 35.41 lacs instead of Rs. 37.48 lacs accepted by the Reference Court.

19. As the Reference Court has not decided the case, properly this court has an option either to remand the case to the trial court for fresh determination after assigning reasons or to decide the appeal as continuation of the reference proceedings, after consideration of the facts and circumstances and the evidence brought on record. The option that instead of remanding the case to the Reference Court, as agreed by the learned counsel for both parties, the matter can be decided by this Court.

20. Having regard to the afore-stated discussion and observations made hereinabove, the impugned judgment passed by the Reference Court being not sustainable is set aside. As a result the impugned judgment/award passed in the reference by the Reference Court is modified, holding that the respondents 1 & 2 are entitled to an amount of Rs. 35.41 lacs instead of Rs. 37.48 lacs as granted by the Reference Court alongwith solatium @ 15% and interest @ 6% per annum, from the date of acquisition, until payment of entire amount.
21. Appeal is thus allowed. Reference Court record be sent down forthwith alongwith copy of this judgment for information.
- No order as to costs.

**SRINAGAR**  
28.12.2023

**( M.A.CHOWDHARY )**  
**JUDGE**

*Mujtaba*

*Whether approved for reporting    Yes/No.*