

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKHAT SRINAGAR**

OWP No.1745/2017

INHABITANTS OF VILLAGE VESSU ...PETITIONER(S)

Through: Mr. Bhat Fayaz, Advocate.

Vs.

UT OF J&K **...RESPONDENT(S)**

Through: Mr. Faheem Nissar, GA-for R1 to R6.
Mr. Mir Majid Bashir, Adv-for R7

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

(ORDER)(ORAL)
27.12.2023

1) The petitioners have filed the instant writ petition in a representative capacity seeking a mandamus upon the official respondents to utilize 07 marlas of land falling under Khasra No.379 for the interests of inhabitants of Village Vessu. In the alternative, a direction has been sought that the said patch of land be developed into a Mini Super Bazar.

2) In terms of order dated 02.11.2017, permission was granted to the petitioners to file the instant writ petition in a representative capacity, whereafter on 13.12.2022, the writ petition came to be disposed of by this Court and a direction was issued to respondent No.4 to utilize 07 marlas of land falling under Survey No.379 situated at Village Manigam for the benefit of local public. Respondent No.2 as also Senior Superintendent of Police, Kulgam, were directed to provide every sort of

protection and help to respondent No.4 for utilization of the land in question and for restraining the encroacher.

3) It seems that the aforesaid order was challenged by one Ghulam Hassan Lone by way of an appeal bearing LPA No.11/2023 before the Division Bench of this Court. Vide order dated 17.05.2023, the Letters Patent Appeal was allowed and order dated 13.12.2022 passed by this Court was set aside. Appellant-Ghulam Hassan Lone was impleaded as respondent No.7 to the writ petition and this Court was directed to accord fresh consideration to the case after obtaining response of the newly added respondent. The writ petition has, therefore, again landed before this Court for consideration.

4) Briefly stated, case of the petitioners is that land belonging to Registrar Cooperative, Anantnag-respondent No.4, measuring 01 kanal 14 marlas under Khasra No.379 at Village Manigam was acquired by National Highway Authority in connection with four laning of the national highway at Village Manigam. It has been submitted that the land along with two structures came under acquisition but out of this land, only 01 kanal 07 marlas came under the alignment of national highway leaving out a patch of land measuring 07 marlas.

5) According to the petitioners, a request was made by the inhabitants of the village to the Cooperative Department for construction of Mini Super Bazar on this 07 marlas of land. At the instance of Cooperative Department, the Additional Deputy Commissioner (Land Acquisition), Anantnag, vide his communication dated 04.07.2017 asked Tehsildar,

Devsar/Qazigund to demarcate the left over land for raising construction of Mini Super Bazar. It has been submitted that near the land in question, newly added respondent No.7-Ghulam Hassan, has purchased some land and he has raised construction of shops and that he is not allowing the utilization of these 07 marlas of land belonging to the Cooperative Department for the purpose of construction of Mini Super Bazar.

6) Respondent No.4-Registrar-Cooperative Societies, Anantnag, has filed reply to the writ petition in which it has been submitted that the said Department was in possession of 01 kanal 14 marlas of land under Survey No.379 of Village Manigam and the same was acquired for the purpose of four laning of National Highway from Qazigund to Srinagar along with two single storied buildings. It has been submitted that as per communication dated 04.07.2017 of Additional Deputy Commissioner (Collector Land Acquisition), Anantnag, only 01 kanal 07 marlas of land has come under acquisition for four laning of National Highway at Village Vessu thereby leaving a patch of land measuring 07 marlas on spot. It has been further submitted that the Department tried to raise fresh construction on this 07 marlas of land but could not do so due to forcible intervention of respondent No.7-Ghulam Hassan Lone.

7) Respondent No.5-Tehsildar, Devsar, has filed his reply in which it has been submitted that the land measuring 01 kanal and 14 marlas in Survey No.379 at Village Manigam was recorded in the name of Cooperative Department. It has been submitted that whole of the aforesaid land came within the alignment of the Highway and the same

was accordingly acquired. It has been specifically stated that no portion of the acquired land was left out of the alignment of the National Highway. It is being submitted that Additional Deputy Commissioner (Collector Land Acquisition), Anantnag, received a communication from the Deputy Registrar Cooperative Societies, claiming that out of 01 kanal and 14 marlas of land, only 01 kanal and 07 marlas has come within the alignment and land measuring 07 marlas has been left out. Further a request for on spot demarcation in respect of left out 07 marlas of land was made.

8) A request from Auqaf Committee, Vessu, was also received, whereafter a team comprising two Naib Tehsildars and Patwaries was constituted for conducting demarcation. On 24.07.2017, the Committee submitted its report. As per this report, whole quantum of the acquired land had come within the alignment and no part of the land out of Survey No.379 was left out. The report was submitted to the Additional Deputy Commissioner (Collector Land Acquisition), Anantnag. It has been further submitted that the Auqaf Committee feeling dissatisfied with the aforesaid report, again sought demarcation of the land, whereafter a fresh report dated 24.08.2017 was submitted by the Committee. This time, the demarcation was conducted in presence of the members of the Auqaf Committee, Vessu and in presence of respondent No.7. Again, it was reported that whole quantum of land measuring 01 kanal and 14 marlas recorded in the name of Cooperative Department has come within the alignment of Highway and no land is left out. It was also found that a building belonging to a migrant was existing upon Survey No. 378 and

attorney in respect of the same has been executed in favour of respondent No.7. It has been submitted that the land in Khasra No.378 was belonging to a migrant and neither the Cooperative Department nor the petitioners have any right to claim ownership over the same.

9) Respondent No.7 in his reply has submitted that after acquisition of land measuring 01 kanal and 14 marlas under Survey No.379 belonging to Cooperative Department by National Highway Authority of India, he purchased nearby land measuring 09 marlas in Survey No.378 from its previous owner whereafter he constructed a shopping complex thereon. It has been submitted that some villagers intended to encroach upon the National Highway and that is why they are claiming that only 01 kanal and 07 marlas of land belonging to the Cooperative Department has come under the alignment of National Highway.

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

11) The claim of the petitioners and respondent No.4-Cooperative Department is that the land measuring 01 kanal and 14 marlas belonging to the Cooperative Department was acquired by the National Highway Authority for the purpose of four laning of National Highway. According to them, though whole of the land measuring 01 kanal and 14 marlas was acquired for the said purpose but out this land, only 01 kanal and 07 marlas came under the alignment of National Highway leaving out a patch of 07 marlas on spot. In this regard, the petitioners and respondent No.1 are relying upon the letter of Additional Deputy Commissioner

(Collector Land Acquisition), Anantnag dated 04.07.2017. Perusal of the aforesaid letter shows that the Additional Deputy Commissioner (Collector Land Acquisition), Anantnag, has nowhere recorded that 07 marlas of land have been left out on spot. Vide the said communication, he has only asked Tehsildar, Devsar/Qazigund to visit the spot and constitute a team of revenue experts for demarcation of the left out patch of land as was being claimed by the Deputy Registrar Cooperative, Anantnag, vide his letter dated 16.06.2017.

12) The revenue authority i.e. Tehsildar, Devsar has in his reply categorically stated that demarcation of the land was conducted, not once but on two occasions by constituting a team of revenue officials and on both the occasions, it was found that whole of the land i.e. 01 kanal 14 marlas belonging to the Cooperative Department has come under four laning of National Highway leaving no patch of land belonging to the Cooperative Department. In fact, respondent No.7 has placed on record documents to show that respondent No.4-Cooperative Department has received compensation for whole of the land measuring 01 kanal and 14 marlas. The revenue authorities after demarcation of the land have clearly indicated that respondent No.7 has obtained an attorney from a migrant in respect of the nearby land falling in Khasra No.378.

13) In the absence of any record to suggest that any patch of land belonging to the Cooperative Department was left out on spot, the petitioners cannot seek a direction upon the respondents to construct a Mini Super Bazar on spot as there is no land belonging to respondent

No.4 available on spot. The very basis of the claim made by the petitioners is not supported by the material on record, therefore, the same is not tenable.

14) For the foregoing reasons, I do not find any merit in the petition. The same is dismissed accordingly. Interim direction, if any, shall cease to be in operation.

(SANJAY DHAR)
JUDGE

Srinagar
27.12.2023
"Bhat Altaf, PS"

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