

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

OWP No.421/2005

Sudershan Singh (Age 48 years)
S/O Sh. Sant Singh,
R/O Bir Pur,
At present House No.1823-F,
Shastri Nagar, Jammu

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

Through :- Mr. Jagpaul Singh, Advocate.

V/s

1. State of Jammu and Kashmir,
Through Commissioner/Secretary to Govt.,
Housing and Urban Development Department,
J&K, Srinagar.

....Respondent(s)

2. Collector Land Acquisition,
Jammu Development Authority,
Jammu.

3. Director Land Manager,
Jammu Development Authority,
Jammu.

4. Executive Engineer,
J.D.A. Divison No.I,
Jammu.

Through :- Mr. Adarsh Sharma, Advocate.
Ms. Sagira Jaffar, Advocate vice
Mrs. Monika Kohli, Sr. AAG.

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

ORDER

19.03.2024

1. By the medium of this writ petition, the petitioner seeks a writ of certiorari for quashing Notification No.JDA/LA/66-74 dated 29.05.2000 as well as Award No.JDA/LA/48-52 dated 30.04.2002 issued by the respondent No.2.In this petition, a writ of prohibition is also sought by the writ petitioner for prohibiting the respondents from taking possession of the land comprising Khasra No.195 measuring 3 marlas 179 sft. situate at Channi Rama, Tehsil Jammu.

2. Respondent no.2-Collector Land Acquisition, Jammu Development Authority, Jammu vide notification no. JDA/LA/66-74 dated 29.05.2000 under

Sub Section (1) of Section 4 of the Land Acquisition Act notified for acquisition of land measuring 1 Kanal 1 Marla 163 Sft, falling under Khasra Nos. 195 min & 196 min and sought objections within 15 days from all persons having interest in the said land.

3. Subsequently, vide Notification dated 08.12.2000, respondent no.2 issued notice under Section 9-9-A of the Land Acquisition Act. Finally, the award was passed on 30.04.2002.

4. It is averred in the writ petition that the petitioner filed objections to the notifications dated 29.05.2000 and 08.12.2000, however, without considering the objections filed by the petitioner, respondent no.2 passed the final award dated 30.04.2002. Aggrieved of the said award passed by the Collector, the petitioner left with no option but to approach this court by way of filing this writ petition.

5. The precise argument of Mr. Jagpaul Singh, learned counsel appearing on behalf of the petitioner is that the then Collector Land Acquisition of Jammu Development Authority, who has issued notices dated 09.05.2000 and 08.12.2000 under Sections 4 and 9-9-A of the Land Acquisition Act was not competent to issue the said notices as he was not conferred with powers under sub section (4) and (5) of Section 6 of the Land Revenue Act at the time when the said notifications were issued. Therefore, the impugned notices and award being without jurisdiction and power are invalid and are required to be set aside.

6. In support of his submissions, Mr. Jagpaul Singh, learned counsel has relied upon judgment passed by this court in the case ***Kuldeep Singh v. State of J&K & Anr.*** reported at 2004 (2) JKJ[HC] 117, wherein the same issue was considered and decided.

7. Paras 6, 7, 8, 9 & 11 of the said judgment are reproduced hereinbelow for the sake of reference:

6. *The Land Acquisition Act, 1990 empowers the Collector to initiate proceedings for acquisition and to issue notice under Section 4 of the Act. Section 3(d) defines the expression, "Collector", which means the Collector as defined under the Land Revenue Act, 1996. With a view to determine the real definition of Collector, we have to fall back on the definition of "Collector" as prescribed under the Land Revenue Act, 1996. Both the parties placed reliance upon section 6 of the Land Revenue Act which defines the Revenue Officers, their classes and powers. For convenience the relevant extracts of the same are reproduced:-*

"6. Classes of Revenue Officers-

(1) There shall be the following classes of Revenue Officers, namely:-

- (a) The Financial Commissioner;*
- (b) The Divisional Commissioner;*
- (c) The Collector;*
- (d) The Assistant Collector of the first class;*
- (e) The Assistant Collector of the Second Class;*

(2) The Deputy Commissioner of a District shall be the Collector thereof; and an Assistant Commissioner and a Tehsildar shall be an Assistant Collector of the first class and a Naib Tehsildar an Assistant Collector of the Second Class.

(3) Unless the Government issues a notification to the contrary, the jurisdiction of the Financial Commissioner shall extend to the whole of the State and of Divisional Commissioners to the provinces and of Collectors and Assistant Collectors to the Districts and Tehsils respectively in which they are employed.

(4) The Government may by notification confer on any person –

- (a) all or any of the powers of a Financial Commissioner, Divisional Commissioner or Collector under this Act, or*
- (b) all or any of the powers with which an Assistant Collector may be invested thereunder; and may by notification withdraw any powers so conferred.*

(5) A person on whom powers are conferred under Sub-section(4) shall exercise these powers within such local limits and in such classes of cases as the Government may direct and, except as otherwise directed by the Government, shall for all purposes connected with the exercise thereof, be declared to be a Financial Commissioner, Divisional Commissioner, Collector or Assistant Collector, as the case may be."

7. Sub-Section (1) of Section 6 defines the categories of Revenue Officers. Sub section (2) prescribed the powers of Collectors and Assistant Collectors conferred upon them by virtue of their office. Similarly, Sub-Section (3) defines the jurisdiction of the Revenue Officers and Collector to be exercised while holding their respective posts (office). Sub-Section (4) of the aforesaid section empowers the Government to confer the powers of Financial Commissioner, Divisional Commissioner or Collector upon any person. Sub-Section (5) further empowers the Government to define the jurisdiction of such of the persons upon whom the powers envisaged under sub-section 4 of Section 6 are conferred. Learned counsel for the respondents has vehemently argued that Brij Mohan Sharma having been transferred as Collector, JDA vide Govt. Order No. 956-GAD of 2000, dated 16.08.2000 is deemed to be a Collector for purposes of Land Acquisition Act.

8. A bare perusal of section 6 of the Land Revenue Act, 1996 makes it clear that there are certain classes of Revenue Officers as defined under Sub-section (1). Some of the Officers are entitled to exercise the power of Collector *ex-officio*, whereas the Government can confer such powers on any person by a necessary notification in this regard. I have perused the Govt. Order No. 959-GAD of 2000, whereby Brij Mohan Sharma, KAS has been transferred and posted as Collector, JDA. The subject and preface of the aforesaid Government order demonstrate that Brij Mohan Sharma has been transferred and posted in the interest of administration. It also appears that there is a post of Revenue Officer in the Jammu Development Authority which is designated as "Collector, Jammu Development Authority". This post is not the one mentioned under sub-section (2) of Section 6 where a Revenue Officer by virtue of his office is entitled to exercise the powers of Collector. The post is admittedly outside the cadre as specified under sub-section (2). Therefore, it becomes necessary for the Government to issue a Notification in terms of sub-section (4) of Section 6 of the Land Revenue Act if it intends to confer powers of "Collector" upon any such person. Admittedly no specific notification conferring power of Collector upon Brij Mohan Sharma has been issued while posting him as Collector, Jammu Development Authority. Transfer of an Officer in the routine manner to a post, even if designated as Collector in any organization does not *ipso facto* make him the Collector for purposes of Land Revenue Act or the Land Acquisition Act. The object and purport of sub-section (4) is to specifically confer powers upon a person if not holding a post as specified under sub-section (2). I am unable to accept the arguments of the respondents that Brij Mohan Sharma who issued the impugned Notification under section 4 is empowered to perform the duties and functions of a Collector by virtue of his transfer as Collector vide Govt. order No.959-GAD of 2000, dated 16.08.2000. I, therefore, hold that respondent No.2 though designated as Collector was/is not entitled to issue the impugned notice under Section 4(1) of the Land

Acquisition Act or exercise the powers of Collector under the provisions of the Land Acquisition Act.

10. xxxx

11. In view of discussions made hereinabove, I have no doubt in my mind that the acquisition of the land by respondent no.2 is not in accordance with law, be it the provisions of the Development Act and/or the Land Acquisition Act. The existence of public purpose is not disputed. However, the procedure required for compulsory acquisition under the Development Act has not been followed. Respondent No.2 acting on behalf of the Jammu Development Authority had no authority to initiate the process for compulsory acquisition as it is only the Government which is empowered under law (Section 16) to acquire land for purposes of Development under the Act. This is besides the fact that respondent no.2 has no authority to acquire land as Collector. It will not be out of context to say that the entire proceedings for acquisition of land are without sanction of law. This petition accordingly succeeds, the impugned notice dated 31.01.2001 issued under Section 4(1) of the Land Acquisition Act is hereby quashed and all subsequent proceedings are declared incompetent and non-est. This however, does not prevent the respondents from initiating proceedings for acquisition of land in accordance with law.”

8. Mr. Jagpaul Singh, learned counsel further vehemently contended that SRO 216 issued in favour of the then Collector Shri Brij Mohan Sharma cannot be deemed to be a power conferred under the relevant Sections of the J&K Land Revenue Act.

9. On the other hand, Mr. Adarsh Sharma, learned counsel for the JDA has produced SRO No. 216 issued vide notification dated 13.06.2002, whereby it was stated that ‘in exercise of the powers conferred by sub-section (4) and (5) of Section 6 of the Jammu and Kashmir Land Revenue Act, Samvat 1996 (XII of 1996) and in supersession of notification SRO 305 dated 28.07.1999, the Government hereby confers upon Shri Brij Mohan Sharma, Collector Land Acquisition, Jammu Development Authority, the powers of Collector to be exercised by him within the local area of the said Authority in respect of land acquisition cases pertaining to the authority.’

10. The said SRO is taken on record.

11. Mr. Adrash Sharma, learned counsel fairly stated at the Bar that despite his best efforts, he could not lay his hands on any notification conferring the then Collector, Mr. Brij Mohan Sharma powers under sub section (4) and (5) of Section 6 of the Land Revenue Act. However, the SRO 216 has been issued in favour of the same officer, namely Sh. Brij Mohan Sharma later on. Therefore, he submits that the said SRO can be treated as SRO conferring powers under sub section (4) and (5) of Section 6 of the Land Revenue Act in this case also.

12. After careful perusal of Section 6 of the Land Revenue Act, I am of the considered opinion that SRO 216 cannot be considered to have retrospective effect and by no stretch of imagination be considered as SRO governing the field at the relevant point of time. I am fortified in taking this view by an earlier judgment passed by this court on 11.06.2018 in SWP No.49/2002 titled Madan Gopal v. State and others.

13. The judgment relied upon by learned counsel for the petitioner, in my opinion, applies on all fours to the present case.

14. In view of what has been said above and the judgment relied upon by the learned counsel for the petitioner, the writ petition is allowed and the impugned notices as well as award are set aside being passed without any jurisdiction and power conferred under Section 6 of the Land Revenue Act.

15. The impugned notifications and award are set aside.

16. However, respondents are at liberty to issue fresh notifications strictly in accordance with law for acquiring the land in question if required for public purpose.

17. The writ petition is allowed.

18. No order as to costs.

(Tashi Rabstan)
Judge

Jammu:
19.03.2024
Raj Kumar

