

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...

RFA no.10/2021

Reserved on: 30.08.2024

Pronounced on: 24.12.2024

1. Chief Engineer, Northern Railways Delhi-06
2. Deputy Chief Engineer, Northern Railways Udhampur

.....Appellant(s)

Through: Mr Nazir Ahmad Bhat, Advocate

Versus

1. Manzoor Ahmad Wani S/o Ghulam Mohammad Wani
 2. Mohammad Maqbool Ahmad Baba S/o Late Mohd Akram Baba
 3. Ghulam Ahmad Bhat S/o Assadullah Bhat
 4. Mohammad Shafi Wani S/o Ghulam Mohammad Wani
- All residents of Machwa, Baghi-Mehtab Tehsil Chadoora.

.....Respondent(s)

Through: Mr S.M.Ayoub, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Land of respondents was acquired for construction of Railway Track. Collector, Land Acquisition Northern Railways made a Reference to the court of Principal District Judge, Budgam ("*Reference Court*" hereinafter). Reference was diarized as File no.25/Reference titled as *Manzoor Ahmad Wani and others v. Collector Land Acquisition and others*. Claimants/respondents' case had been that compensation assessed by Collector qua their land and structures had not been properly assessed as meagre amount had been assessed as compensation. Respondents prayed for just and fair compensation.

2. Appellants herein filed their Objections before Reference Court, stating that respondents herein were not entitled for more compensation than what had been paid to them.
3. The Reference Court vide Order dated 16th February 2006 framed following issues:
 - (1) Whether the petitioners have been paid inadequate compensation for the land acquired by the respondents and also for the houses which were owned by the petitioner and were standing on the acquired land? OPP
 - (2) In case issue no.1 is proved in affirmative what will be adequate compensation to be paid to the petitioners? OPP
 - (3) Whether the respondents had promised the petitioners that without charging any amount they will be provided alternate house sites but the house sites were provided against consideration. If so, what will be its effect on the rights of the petitioners and whether they are entitled to any additional compensation? OPP
 - (4) Relief.
4. By impugned judgement dated 10th November 2018 the Reference Court found that respondents proved issues 1&2 framed by it and, as such, held them entitled to the relief and consequently held claimants/ respondents entitled to 25% escalation in the rate of compensation already worked out by Collector for the land and 10% escalation in the rates already worked out for the built-up structures. The final amount awarded in favour of respondents as compensation shall be the original amount plus the amount as enhanced. The final amount less the amount of compensation already paid to the respondents shall be payable with interest @ 10% from the date of final award.
5. The grounds of challenge for quashing judgement impugned taken by appellants are that Reference Court has failed to appreciate the law laid down for making enhancement in compensation made by Collector, Land Acquisition Act. The proper procedure adopted by Collector by

calling the parties under PNB and subsequently framing committee comprising of officials of various departments including R&B and Revenue cannot be questioned unless proper procedure was not followed. The Collector has strictly adhered to the Land Acquisition Act as also the law laid down by the Apex Court. There is absolutely no evidence which would furnish the court below the reason to enhance the award passed by the Collector. The reasons for enhancing compensation given by Trial Court does not coincide with mandate of Section 23 of the Land Acquisition Act, which lays down mechanism for determination of compensation in respect of acquisition made and certain valid points of consideration emerged out of the Land Acquisition Act while considering the relevant section which are: 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. All these aspects can be dealt by Reference Court while award passed by the Collector is challenged but same has to be done in accordance with law and on the strength of evidence and procedure as envisaged in Land Acquisition Act for Reference Court has to be followed which has not been done in the instant case. The assessment and enhancement have been done by the Reference Court on the basis of interested parties and not on the basis of any documentary proof. Further narration of appellants is that final award was passed and compensation stands already paid in full and final and received by respondents, as such, question of paying only 80% of

amount mentioned in impugned judgement is not based on correct facts. The award passed by Collector was legal, well founded and sustainable in law as the same has been passed after following proper procedure in accordance with law. The Reference Court is stated to have not looked into the matter meticulously and has failed to consider technical opinion rendered by concerned experts and enhanced compensation by 25% on land and 10% on structures by overriding expert opinion which is not tenable in law.

6. Heard and considered.
7. Perusal of file reveals that Collector, Land Acquisition Qazigund-Baramulla Rail Project, Kashmir, Srinagar, vide no.COLL/ QBR/RL/ 871-889 dated 30th December 2004, issued Final Award.
8. Dissatisfied with Final Award, claimants – respondents herein made an application before Collector for making reference under Section 18 of Land Acquisition Act, stating therein that Collector had undertaken the process of acquisition of land for construction of Qazigund-Baramulla Railway Track and for construction of the said Track the Notification for acquisition of land had been issued. Pursuant to the process of acquisition, the land along with structures of respondents had come under acquisition of the said track, which were land measuring 10 Marlas under Survey no.315/190/198/185/66 along with single storeyed, concrete, slabbed residential house/building fenced with brick wall; land measuring 10 marlas under survey no.315/190/198/185/66 along with single storeyed house/building; land measuring 10 marlas under Survey no.315/190/198/185/55 along with single storeyed residential hosue; land measuring 01 Kanal 04 Marlas under Survey

no.315/190/198/185/66 along with single storeyed residential house. It had also been contention of respondents that the compensation assessed by Collector qua the land and structures had not been properly assessed and the said assessment was highly meagre and not in accordance with mandate as laid down by Land Acquisition Act. The compensation was highly inadequate, improper, keeping in view the site, potential, market value of the land under acquisition and also the price escalation as regards labour, building, material which had not been kept in view while assessing the rate of building up area. It had also been stated by respondents in their application that award framed by Collector ran counter to minutes of meeting/proceedings and various decision taken by the Apex Committee from time to time framed by the Government and headed by Divisional Commissioner, Kashmir and that in one of such meetings, the quorum headed by Divisional Commissioner, Kashmir, recommended/decided that 10% as regards price escalation would be paid over and above to the affected persons with respect to built-up area. It was in the minutes of meeting/proceedings of meeting headed by Divisional Commissioner, Kashmir, that respondents would be given alternate site for residential purposes on the basis of as is and what is acquired. Although respondents were given alternate residential plots of 60'x 40' only instead of half kanal of land as promised but an amount of Rs.1.82 Lacs had been deducted from assessed compensation of building without any reason and justification and against the assurances given by Divisional Commissioner, Kashmir. Earlier four kinds of rates were proposed for: (i) Abi Awal; (ii) Maidani, Baghi Khushki (iii) Built-up area; and (iv) Banjri Qadeem, but when

the award had been framed, no rates for built-up area had been specified which run counter to the proceedings and minutes of the meeting. It was also respondents' contention before the Collector that their sold valuable property/ies for raising construction of residential houses which came under acquisition and compensation amount had not been properly assessed keeping in view the standard of structures and material used. It was made clear by respondents in their application that amount of compensation assessed by Collector was not acceptable to respondents and while receiving 80% of amount of compensation assessed by Collector under protect, respondents were assured that the review of compensation would be taken and paid to respondents along with remaining 20% but despite such assurances, neither the award was read over to respondents nor review of assessment was made. It was also stated by respondents that they were astonished to hear the refusal on the part of concerned officers and by breaking of promise, respondents were forced to suffer.

9. Collector by virtue of letter/order no.COLL/QB/RL/1066-67 dated 10th March 2005, made reference to the Reference Court, which, when received reference from Collector, found that original application and record had not been produced before it and, accordingly, Collector, was directed to appear in person along with entire original record. Objections were filed by other-side/appellants in opposition to respondents' application before the Reference Court. Taking into account rival contentions of parties, the Reference Court settled the issues, as quoted herein before. As a subsequence of which, parties were directed to lead evidence. The witnesses, namely, Manzoor

Ahamd Wani S/o Ghulam Mohammad Wani R/o Machuwa Baghi Mehtab; Ahmad Ganaie S/o Ab. Samad Ganaie R/o Peerbagh, Hyderpora; Mohammad Latief Sheikh S/o Gh. Mohd. Sheikh R/o Machuwa; Mohd. Rajab Bhat son-in-law of Shaban Bhat R/o Machuwa; and Maroof Ahamd Shah S/o Ghulam Ahmad Shah R/o Bagh-e-Mehtab, were examined.

Manzoor Ahmad Wani, witness, stated that he knew respondents and that he had personally purchased the land and constructed a residential house on the said piece of land. They had been residing there since 2001. In the year 2002, Department of Railways issued a notice to respondents to acquire their houses as well as land for construction of railway line. In response thereto, they submitted their objections, in which they requested Railway authorities to provide compensation as per market rate; besides land/plots in Machuwa locality or at any other place where every facility would be available. The place where respondents were residing was a built-up area with every facility. Respondents were called for private negotiations, where concerned department offered to respondents Rs.6,17,000/- with Jabirana, which they promised, but respondents refused the offer. There were orchards adjacent to respondents' land and railways had to acquire said land and fixed Rs.4.60 Lacs per kanal but owners refused said offer. Then Railways Department again called landlords and also respondents, where Railways fixed Rs.8.60 Lacs and included respondents under the purview of same offer/rate and fixed rate to respondents' land as Rs.8.60 lacs as had been fixed in case of owners of orchards. But he and respondents refused this offer. Respondents demanded Rs.14.08

Lacs before negotiation committee which was double the amount already fixed. While matter was pending, the land was forcibly acquired and houses dismantled by bulldozing them. During cross examination, the witness produced sale deed before Collector, showing Rs.3.00 Lacs for half of Kanal way back in January 2000.

Another witness was Ghulam Ahmad Ganai, who stated that he was posted as Assistant Collector Commissioner, Budgam, Railway Project. He stated that he knew respondents. According to him, respondent did not make private negotiation with Government/railway committee, but received compensation under protest. Final Award was issued.

Another witness was Maroof Ahmad Shah, who stated that he knew respondents; they had built their houses there in which they were residing. Railway Department acquired respondents' property/land. He also supported the case of respondents.

Another witness was Mohammad Rajab Bhat, who stated that he knew respondents and that respondents' land and property was acquired by Railways Department for construction of railway track. Respondents had residential houses. Other witness also supported the case of respondents.

10. The Reference Court took the issues one by one and deliberated on them elaborately and comprehensively and thereafter decided them in favour of respondents.

While deciding issue no.1, the Reference Court found that respondents had been successful in proving that inadequate amount of

compensation had been assessed in their favour by Collector both on account of value of land as well as value of structures built upon.

For deciding second issue viz. quantum of compensation, the Reference Court made verbose discussion and arrived at a conclusion that just and reasonable compensation so far as land of respondents was concerned, it would be an amount of Rs.8.60 Lacs plus 25% per kanal and the value of the structures would be raised by 10% as compared to already worked out by the Collector and that final award would carry 15% solatium as already awarded in favour of respondents by Collector.

The Reference Court also mentioned that respondents had already been given 80% of the award amount which they had received under protest, as such, final amount of compensation which was worked out less the amount of compensation which respondents had already received would carry an interest @ 10% per annum from the date of final award.

In that view of matter impugned judgement does not call for any interference.

11. In view of above, the instant appeal is **dismissed**. Interim direction, if any, shall stand vacated.

(Vinod Chatterji Koul)
Judge

Srinagar

24.12.2024

Ajaz Ahmad, Secy.

Whether approved for reporting? Yes/No.