

S.No.23

Regular List

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

WP(C) 2185/2023

CM(5102/2023)

KHAWAJA NIZAM SHAH(SENIOR CITIZEN) ...Petitioner(s)/Appellant(s)

Through: Mr. Syed Faisal Qadri, Sr. Advocate with
Ms. Maria Ashraf, Advocate

Vs.

UNION TERRITORY OF J AND K AND ORS. ...Respondent(s)

Through: Mr. Waseem Gul, GA
Ms. Nowbahar, Advocate vice
Mr. Bikramdeep Singh, Dy. AG

CORAM:**HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE****ORDER**20-05-2025**ORAL**

1. While the matter was being argued it has been brought to the notice of this Court by Mr. Syed Faisal Qadri, learned Senior Advocate for the petitioner, that land of the petitioner has been acquired by the respondents without following due process of law and till date, the compensation has not been paid to the petitioner nor the procedure as envisaged under law has been followed.
2. The specific case of the petitioner is that right from the date when the land of the petitioner was acquired by the respondents illegally, the petitioner has been agitating his cause before the respondents for the release of compensation, but the matter was lingered on for about more than 30 years till the detailed

enquiry was conducted by the Deputy Commissioner, Srinagar exercising the power as a Collector in the instant case.

3. From a bare perusal of the order No.DLS/LAS/1797/GH/290-96 dated 9th July, 2019 passed by the concerned Collector, which is on record as annexure-XI, reveals that the land of the petitioner measuring 3 kanals, 7 marlas 6 ½ sfts under survey Nos 107 min, 106, 99 min and 107 min, has been admitted to be physically under the possession of the Medical Department (Gousia Hospital Srinagar/Power Development Department).
4. From a bare perusal of the enquiry conducted by the Collector, it has also come to fore that the land owner (petitioner) has not been paid compensation of land in question, despite lapse of 30 years at that relevant point of time when the said enquiry was conducted in the year of 2019 and the matter was lingered on one pretext or the other. In this regard a detailed enquiry was conducted under the Chairmanship of the Deputy Commissioner Srinagar wherein, it was decided that all the concerned departments shall provide details of the funds released by Core Area Development Project to JKPCC/Health Department for construction of shopping line/Hospital.
5. Keeping in view all the peculiar facts and circumstances of the case and detailed enquiry conducted, it was established beyond any reasonable doubt that the shopping line and Gousia Hospital, Khanyar, has been constructed on the proprietary land of the petitioner and no compensation has been paid to him despite lapse of more than 30 years.

6. Since the concerned Collector was of the opinion that valuation of the structure (shopping line/hospital) was to be made by the PWD (R & B) Department and the valuation of the land by the Revenue Department, the matter was referred for their advice to furnish the valuation report as per the prevailing market value at that relevant point of time, so that the concerned department i.e., R&B/Health, deposit the said amount of compensation in the Revenue deposit Head 8443, for disbursement amongst the rightful owners.
7. Mr. Faisal Qadri, learned Sr. Advocate has drawn the attention of the Court to yet another communication, issued from the office of the Deputy Commissioner, Srinagar dated 12th January, 2021, a perusal whereof reveals that an amount of Rs. 04.00 crore in favour of the Collector, Land Acquisition (Assistant Commissioner Revenue), Srinagar under DDO code No. ATTREV0009 in Additional Treasury Tankipora, Srinagar as compensation of the land in question, has been assessed and it has been conveyed through the medium of the aforesaid communication/order that the same will be released/disbursed in favour of the rightful land owners after proper verification/norms in vogue. The aforesaid amount has been assessed way back in 2021, which finds mention in the aforesaid communication issued by the concerned Deputy Commissioner, Srinagar to the Financial Commissioner, Health & Medical Department, Government of Jammu & Kashmir and since then, more than four years have lapsed and the amount

has not been released in favour of the petitioner/ rightful claimant.

8. *Per contra*, the reply stands filed on behalf of the respondents in which the respondents have taken a specific stand that since the instant petition has been preferred on behalf of the Attorney Holder, thus, the same is not maintainable and liable to be dismissed. Another ground which has been canvassed by learned counsel for the respondents is that the land has been taken by R & B Department and therefore, the compensation is also required to be paid by the R&B Department being the indenting department and not the Health Department.

9. Heard learned counsel appearing for the parties and perused the material on record.

10. With the consent of the learned counsel for the parties, the petition is taken up for final disposal.

11. The stand taken by the respondents in the reply affidavit is contrary to the document placed on record by the petitioner which have been referred in the preceding paragraphs and a perusal whereof, reveals that in pursuant to the enquiry conducted which finds mention in the order of the Deputy Commissioner, Srinagar dated 9th July, 2019, a finding has been recorded that the land in question is physically under the possession of the Medical Department i.e., Gousia Hospital Srinagar/Power Development Department. In light of the enquiry conducted by the concerned Collector, and the finding recorded after appreciation of all material facts on record it has

also been established beyond any reasonable doubt that the shopping line and Gousia Hospital Khanyar have been constructed on the proprietary land of the petitioner/attorney holder and no compensation has been paid to him despite lapse of more than 30 years at that relevant point of time, when the aforesaid order came to be issued.

12. Pursuant thereto, the valuation of the property has also been assessed to the tune of Rs. 4.00 crores. The aforesaid order has been issued by the concerned Collector in pursuance to detailed enquiry which has been accepted by the respondents and has not been called in question before any forum. Thus, the stand taken by the respondents that the land in question has been taken by (R&B) Department is factually incorrect and contrary to the finding recorded in the enquiry report conducted by the concerned Collector.

13. Learned counsel for the respondents while filing the reply has placed on record two communications, issued by the concerned Executive Engineer City Roads Division R&B Srinagar, to the Chief Medical Officer, Srinagar dated 24th March, 2000, a perusal whereof, reveals that the building in question has been acquired by the Health and Medical Department on rental basis. From a bare perusal of another communication dated 18th April, 2000, which is also on record, further reveals that the rent to the tune of Rs. 28954/- has been assessed as rent per month for the accommodation of 2nd floor occupied by the PHC Khanyar.

14. The communications which have been referred to hereinabove by the respondents and have been placed on the record while filing the reply pertains to the year 2000 and on the other hand, the petitioner while filing the instant petition has placed on record a latest communication issued by the concerned Deputy Commissioner, Srinagar dated 12th January, 2021, a perusal whereof reveals that the matter was taken up with various departments to put forth their concern with regard to the case and also to come up with NOC to the fact, whether the portion of land measuring 3 kanals 7 marlas and 6 ½ sqft has been acquired by them or not.

15. As per report of the concerned Departments, it has come to fore that neither any compensation for the said land has been paid nor the same has been acquired through Private Negotiation Committee (PNC) and all the departments have conveyed their no objection, in case the land owner is compensated for the said land and the details of the departments which have conveyed their no objection are as under:

1. Chief Engineer, PWD (R&B), Kashmir
2. Chief Engineer PDD, Kashmir.
3. Collector CRP
4. Collector LAWDA
5. Collector ERA
6. Collector PWD
7. Managing Director Housing
8. Ex. Engineer I & FC

16. Thus, in the light of the no objection conveyed by various departments, it was held that the land in question is under the occupancy of Health Department accommodating Gousia Hospital Khanyar, Srinagar and since, the land owner has been condemned unheard and his long pending claim for compensation was required to be addressed and in the aforesaid backdrop, the amount to the tune of Rs. 4.00 cores was assessed which was required to be paid to the rightful land owner after following proper verification/norms in vogue. Thus, the communication which has been referred by the respondents in the reply affidavit have lost significance in the light of the latest order issued by the concerned Collector, whereby, no objection has been issued by all the concerned Departments and the earlier stand taken by the respondents has culminated into the subsequent order issued from the office of the Deputy Commissioner, Srinagar, whereby all the concerned departments mentioned *supra* have given their no objection for the release of compensation in favour of the petitioner. Thus, the stand taken by the respondents in the reply affidavit is liable to be rejected.

17. Accordingly, in light of the admitted stand of the respondents, it can safely be concluded that the land of the petitioner is in active possession of the respondents for more than 36 years and no compensation has been paid to the petitioner inspite of the fact that the amount to the tune of Rs. 4.00 crores has been assessed way back in the year 2021 and a direction has been

issued to release it so that the same is deposited in the account of the Collector Land Acquisition under a particular head with the sole object to release the compensation in favour of the rightful land owner/petitioner after proper verification. Since, the respondents have turned a deaf ear and have not proceeded thereafter, which constrained the petitioner to file the instant petition. The respondents by taking a false stand that the land has been acquired by the R&B Department, does not absolve their liability to pay the compensation as it is an admitted stand of the respondents that the land is in possession of the respondents for more than 36 years and no compensation as on date has been paid to the rightful owners and even no procedure which was required to be followed for acquiring the said land, has been followed. Thus the action of the respondents in the instant case is violative of Article 300-A of the Constitution of India.

18. The ground taken by the respondents in the reply affidavit is that since the petition has been filed by the Attorney holder, therefore is not maintainable. However, this issue can be addressed by the respondents at the time of releasing the compensation to the rightful owner and not to the attorney holder after due verification. Thus, the ground taken by the respondents does not come in the way of the respondents to release the compensation in favour of the rightful owner on mere hyper-technical objection that petition has been filed by

the attorney holder as the respondents have not disputed the factum of land being acquired by them.

19. The right to property is now considered to be not only a constitutional or statutory right but also falls within the realm of human rights. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment etc and over the years, human rights have gained a multifaceted dimension.

20. This court in the case titled ***Abdul Majeed Lone v. Union of India, through Secretary to Govt. of India Home Department, New Delhi & Ors reported as LiveLaw2024(JKL) 318*** has held as under:

20. The law has been settled at naught by the Hon“ble Supreme Court in various authoritative pronouncements that right to property in view of the Article 300-A of the Constitution of India is a very important human right and no one can be deprived of his/her property, otherwise, than following due procedure of law and it is a recurring cause of action. The petitioner in the present case was dispossessed from their land way back in the year 1978 admittedly, without legal sanction or following the due process of law and yet, no compensation has been paid to the petitioner. Thus, the Union of India is under legal obligation to pay the rental compensation to 16 the petitioner and to initiate the process to formally acquire the land, if they so desire in accordance with law. 21. Thus, this Court is of the view that the action of the respondent-Union of India is illegal and unconstitutional which cannot sustain the test of law in the light of the stand taken by the Revenue Authority.

21. Further, this court is fortified by the judgment passed by the Division Bench of this Court in case titled “Shabir Ahmed

Yattoo v. UT of J&K bearing WP(C) No. 174/2021,” decided on 30.06.2022, wherein it has been held as under:-

“5. The aforesaid facts and circumstances clear reveal that the private land of the petitioner has been taken over by the respondents forcibly without the consent of the petitioner and without taking recourse to any procedure prescribed in law. It is also an admitted fact that the petitioner has not been paid any compensation in respect of the said land though the determination/assessment of the compensation is under way as per the stamp duty rate.

6. It is well recognized that Right to Property is basic human right which is akin to a fundamental right as guaranteed by Article 300 A of the Constitution of India and that no one can be deprived of his property other than by following procedure prescribe in law.”

22. In exercise of its power, the state may interfere with an individual's property rights by acquiring it, but this must be done for a public purpose, and fair compensation must be provided. In a democratic system that operates under the rule of law, the state cannot take away the petitioners' property without legal authorization. The state is required to follow the proper legal procedures for acquisition, requisition, or any other permissible statutory method. As a welfare state bound by the rule of law, the state cannot assume powers beyond those granted by the Constitution.

23. In this context, I am fortified by the view taken by the Hon'ble Supreme Court in case titled *Vidya Devi versus state of Himachal Pradesh* 27 OWP No. 1885/2017 reported in (2020) 2 SCC 569. The relevant paragraphs are reproduced as under:

“12.1. The Appellant was forcibly expropriated of her property in 1967, when the right to property was a

fundamental right guaranteed by Article 31 in Part III of the Constitution. Article 31 guaranteed the right to private property, which could not be deprived without due process of law and upon just and fair compensation.

12.2. The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right in a welfare State, and a Constitutional right under Article 300 A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300 A, can be inferred in that Article.

12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai, wherein this Court held that: (SCC p. 634, para 6)

24. Additionally, the law has been clearly settled by the Hon'ble Supreme Court in several authoritative pronouncements, affirming that the right to property, under Article 300-A of the Constitution of India, is an important human right. No one can be deprived of his/her property without following the due process of law, and issue projected in the instant petition is a recurring cause of action.

25. In the instant case, the petitioner's property has been taken more than 30 years ago, admittedly without legal authorization or adherence to the proper legal procedures, and no compensation has been provided till date. Therefore, the State has a legal obligation to pay compensation to the petitioner and

initiate the formal process of acquiring the land, if they are willing to do so permanently in accordance with the law.

26. Thus, this Court is of the view that the action of the respondent- Union Territory of Jammu and Kashmir, is illegal and unconstitutional which cannot sustain the test of law.

27. Admittedly, the instant petition has been preferred by the attorney holder of the lawful claimant/owner of the property in question against which an objection has been raised by the respondents for the maintainability of the instant petition. However, this court refrains from recording any finding whether the petitioner is duly appointed by the lawful claimant/owner of the property as attorney holder and has a right to claim the property on behalf of the lawful claimant in the light of the admitted stand of the respondents.

28. Since the respondents have not disputed the factum of the land being acquired by them, this court in the peculiar facts and circumstances direct the respondents to pay compensation to the lawful claimant/ owner of the property after due verification in conformity with the findings recorded by the concerned Deputy Commissioner, wherein, compensation to the tune of Rs 4.00 Crore has already been assessed.

29. For the foregoing reasons and in the light of facts and circumstances of the case, this writ petition is allowed and the compensation which has already been assessed to the tune of Rs. 04.00 crores, pursuant to the enquiry conducted by the Collector (Deputy Commissioner) Srinagar, is required to be

paid to the lawful claimant/owner after due verification within a period of six weeks from the date a copy of this order is made available to the respondents. It is made clear, that in case the compensation, which has been assessed pursuant to the enquiry conducted by the Collector, is not released within the aforesaid period in favour of the lawful claimant/owner under law after fulfilling all codal formalities, he shall be entitled to the interest @ 6% on the assessed amount.

30. The instant petition is disposed of in the manner indicated above along with all connected applications.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:

20-05-2025

Mubashir

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No