HIGH COURT OF JAMMU AND KASHMIR
ATJAMMU

LPA No. 268/2019 (O&M)
(In OWP 1699/2017)

(Through Video Conferencing)

Decided On: 28.12.2020

Omesh Singh and Others

…..Petitioner(s)/Appellant(s)

Through: -Mr.K. S. Johal, Sr.Advocate with
Mr Karman Singh Johal, Advocate.

V/s

State of J&K and Others

…..Respondent(s)

Through: - Mr. S. S. Nanda, Sr. AAG.

CORAM: HON'BLE THE CHIEF JUSTICE (ACTING).
HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE.

JUDGMENT

JAVED IQBAL, J:

1. The respondent No. 3/ Collector Land Acquisition, Ramban, issued a notification No. Acq/PMGSY/16/525-34 dated 23.12.2016 under section 4(1) of the State Land Acquisition Act, SVT 1990 (hereinafter for short 'the Act') notifying therein land proposed to be acquired for construction of Hewagon-Dhanmasta road under PMGSY Scheme package No. JK04-101. Since the alignment qua the construction of aforesaid road was found to

cause damage to number of residential houses as well as land as such realignment of the takeoff of point of road in question got necessitated which realignment came to be approved by the Government of India upon being recommended by the Government of Jammu and Kashmir after obtaining an opinion of the experts in the matter.

2. The appellants herein after filing their objections under section 5-A of the Act inasmuch as availing an opportunity of being heard provided by the official respondents felt aggrieved of the notification dated 23.12.2016 supra inasmuch as the process of acquisition undertaken by the official respondents and instituted writ petition being OWP No. 1699/2017 out of which the instant appeal has arisen, after the said writ petition came to be dismissed by the writ court vide judgement dated 17.08.2019 impugned in the present appeal.

3. Before examining the validity or otherwise of the impugned judgement, it would be appropriate to refer to in brief, the case setup by the writ petitioners/ appellants and both official as well as private respondents here under:

Appellants contentions

4. The appellants / writ petitioners contentions in the writ petition as noticed by the writ court are extracted here under: -

(a) The petitioners who are residents of Revenue Village Dhanmasta Tehsil Pogal Paristan (Ukhral) District, Ramban, are dependent upon the small land holdings which they possess.

(b) The respondent No. 3 issued notification u/s 4(1) of the Land Acquisition Act under No. Acq/PMGSY/16/525-34 dated 23.12.2016 notifying therein that the land mentioned therein is required for public purpose, namely, for construction of Hewogan Dhanmasta first 3.00 km under PMGSY at village Dhanmasta Tehsil Poghal Paristan District.

(c) The petitioner No. 11 got the knowledge of the issuance of the aforesaid notification dated 23rd of December 2016, through passersby and immediately efforts were made to find out whether any such Notification had been issued. In pursuance of the application filed under Right to Information Act, the Notification which was published in the newspaper was provided.

(d) Hewagon-Dhanmaasta road was sanctioned under package No. JK04-101. Since the construction of road from Hewagon to Dhanmasta was causing damage to the property and residents of the area, the Collector Land Acquisition recommended that high level team to be constituted to explore the possibility of alternate takeoff point of the road. The respondents brought the issue to the knowledge of the concerned authorities, who instead of permitting the alternate takeoff point permitted the respondents to change the alignment. An application under Right to Information Act was filed on 4th of December, 2013 seeking certain information from Public Information Officer, office of Executive Engineer PMGSY, Division Banihal, District Ramban and in reply thereto, the respondents

furnished the information that the proposal of the road was under process. It has further been pleaded that the primary object of PMGSY was providing the road connectivity which is only key component of Rural Development for promoting the access to economic and social services. The idea of rural connectivity is that it must increase the income and lead to productive employment opportunities for ensuring sustainable poverty reduction. The government was trying to deprive the petitioners from their agricultural and residential land.

(e) The non-consideration of the objections filed by the petitioners to the acquisition proceedings and the problems likely to be faced by them had given the cause to the petitioners to file the instant petition.

(f) The road from Hewagon to Dhanmasta has already been constructed up to almost 1 Km on the original sanction incurring an expenditure of more than Rs. 60 lakh. The manner of undertaking the construction work in hilly terrain reflects the non-application of mind on the part of the respondents and misuse of public money which has benefitted only the respondents and the contractors. Not only this, the persons to be affected should also have been associated with the decision making process in the democratic setup. The authorities must not be in a haste to take any decision, bet it with regard to construction of a building, road or developing any area. With regard to the roads, day in and day out one hears of accidents taking place in the hilly terrain. In

the excitement and enthusiasm, the so called experts in construction of government roads and buildings and decision making process fail to consider/ understand the finer details and repercaution it may lead in case the works are not started after taking all aspects into consideration. The result of execution of the work during the Maharaj's time and the engineers and other officers engaged in the construction of the roads then shows due application of mind by the then authorities as compared to the authorities at the helm of affairs in the present times. The outlay of the buildings and construction thereof and sites chosen as also the roads constructed appear to ensure that it becomes a regular source of income to those forming a nexus for extraneous considerations.

(g) Along with the documents received under RTI Act vide letter No. ACQ/PMGSY/17/539-40 dated 30.08.2017 is a letter annexed therewith is the letter dated 18th of October, 2016 regarding approval of the competent authority to change the alignment of road work, namely, L059 Hewagon-Dhanmasta in Ramsoo Block sanctioned under PMGSY in the year 2006-2007, The respondents in past also changed the alignment, whether any sanction was granted by the competent authority for change of alignment at that stage or the respondents changed the alignment on their own is required to be confirmed from the respondents.

(h) The issuance of notification under Section 4 (1) of the Land Acquisition Act was malafide. The intention of the respondents was a change in takeoff point; the appropriate authority permitted only change of event. Notification u/s 4(1) would reflect that the areas which have been sought to be acquired do not fall anywhere between Hewogan and Dhanmasta inasmuch as it would require a new takeoff point and has not been authorized by the competent authority. The intention of the authorities to start a new takeoff point for construction of Hewogan Dhanmasta road with a new takeoff point is evidence and reflected in letter dated 22.08.2017 issued by the Executive Engineer, PMGSY Banihal.

(i) Some vested interested persons and influential persons belonging to village Dhanmasta are keen to get the road constructed till their houses. The construction of the road, therefore, to say is for a public purpose is not true, but only to benefit the influential persons of Village Dhanmasta. To the knowledge of the petitioners, beyond their homes, respondents are not being permitted to construct the road. The pick and choose method adopted by the respondents and the persons with vested interests shows that they are hell bent upon dispossessing the petitioners of their land and uprooting them from the settled positions and habitation.

(j) The petitioners had earlier filed a writ petition being OWP No. 844/2014 titled Omesh Singh and others Vs State of J&K and others challenging the action of the

respondents for constructing the road, which was without any authorization. This court vide order dated 12.06.2014 directed the respondents not to interfere in the peaceful possession of the petitioners without following due course of law and remove all the machinery brought on the said land with the purpose of construction of the road.

(k) Pursuant to the issuance of notification under Section 4(1) of the Land Acquisition act, the respondents have proceeded to continue the proceedings under Sections 6, 7 and 17 and notice under Section 9 and 9A of the J&K Land Acquisition Act issued by the office of Collector Land Acquisition (ACR) Ramban bearing No. 10/ACR of 2017-18 informing all interested persons that the government of J&K intends to take possession of the land measuring 74 kanals and 19 marlas at village Dhanmasta Tehsil Pogal Paristan District Ramban for constructionof Hewogan Dhanmasta Road.

(l) The respondents are not transparent in their dealings and it appears that these tactics are being adopted only for coercing the petitioners to give up their rights in their properties for which no authorization has been granted to the respondents.

Contentions of respondent No. 3

5. The respondent No. 3 has contended before the writ court as noticed by it, that the road in question had been sanctioned under the package No. JK04-101 and that at the initial takeoff point, more than 100

number of families were likely to be affected due to the construction of the said road necessitating change of alignment of takeoff point and after the said change of alignment, there was no possibility, the petitioners would get affected.

6. The respondent No. 3 has further contended before the writ court that the petitioners filed objections under section 5-A of the Act in response to notification dated 23.12.2016, whereupon the petitioners were provided an opportunity of being heard and that a detailed report was submitted by respondent No. 3 to the Government of Jammu and Kashmir Revenue Department vide letter dated 09.08.2017 for issuance of declaration under sections 6, 7 and 17 of the Act, which came to be issued on 13.09.2017.

7. The respondent No. 3 has further contended before the writ court as noticed by it, that approval to the change of alignment of the road came to be accorded by the Government of Jammu and Kashmir on 08.10.2016 and that the notifications under section 9 and 9-A came to be properly circulated besides publishing it in local newspapers.

8. The respondent No. 3 has next contended before the writ court that regarding the change of alignment, Government of India approved the same and that after issuance of notification under section 4(1), further proceedings were continued as per the provisions of the Act only after proper hearing was provided to the petitioners under section 5-A of the Act.

Contentions of the private respondents (4-38)

9. The private respondents seemingly have been impleaded as respondents in the writ petition upon laying a motion and the said respondents have contended before the writ court that the revenue village Dhanmasta comprises of 3 Panchayat Halqas namely Dhanmasta-A, Dhanmasta-B and Dhanmasta-C and that in most of the panch constituencies of the said panchayat halqas being hilly terrain and sloppy had no road connectivity and the residents are declared as residents of backward area under Reservation Act and Rules made there under and that due to non-availability of road connectivity the residents of the area including children and students have been suffering .

10. The private respondents have further contended before the writ court as noticed by it, that the road in question had been sanctioned in the year 2006 and was seriously objected by residents of 3 villages namely Hewagon, Inyar and Sirlan regarding its alignment and that upon the said objection was found to be genuine by the officials, possibility of alternate takeoff point came to be explored and finally approval granted thereto by the Government of India, Ministry of Rural Development, Rural Connectivity Division Krishi Bhawan, New Delhi, upon receiving a recommendation thereof from the Government of Jammu and Kashmir.

11. The private respondents had next contended before the writ court that the road from habitation Khudmulla upto the destination i.e. Dhanmasta had already been constructed and Crores of rupees spent and that only the

road from new takeoff point upto Khudmulla being approximately 3 kilometers is yet to be started. The said road is said to benefit 10,000 souls of the area.

12. Heard learned counsel for the parties and perused the record.

13. The learned counsel for the appellants made his submissions in line with the grounds urged in the memo of appeal against the impugned judgement and prayed for setting aside of the same as also grant of reliefs prayed in the writ petition, whereas, the learned counsel for the respondents while making their respective submissions in opposition to those made by the counsel for the appellants defended the judgement under challenge, in tune with the stand taken in the objections filed before the writ court.

14. Before adverting to the rival submissions of the learned counsel for the parties this court deems it appropriate to refer few decisions of the Hon'ble Apex Court being relevant and germane hereto. It is settled law that the wherever there is conflict between the private interest and the larger public interest, the later prevails over the former. The private interest must give way to the public interest and the same should stand subordinate to public good. The Apex Court in "**Ramniklal N. Bhutta and another Vs. State of Maharashtra and others" reported in AIR 1997 SC 1236**at para 10 has noticed as follows:-

> "Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an

ambitious programme of all round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as “Asian tigers”, e.g., South Korea, Taiwan and Singapore. It is, however, recognized on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernization. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for an in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the Courts should keep the larger public interest in mind while exercising their power of granting stay/ injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a Civil Suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public

> interest vis-a-vis the private interest while exercising the power under Article 226 -indeed any of their discretionary powers. It may even by open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to the awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong, quashing the acquisition proceeding is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing in interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the Courts while dealing with challenges to acquisition proceedings."

15. The Apex Court in "**Pratibha Nema Vs. State of MP reported in AIR 2003 SC 3140"**, has noticed as under: -

> "When no prejudice has been demonstrated nor could be reasonably inferred, it would be unjust and inappropriate to strike down the Notification under Section 4(1) on the basis of a nebulous plea, in exercise of writ jurisdiction under Article 226. Even assuming that there is some ambiguity in particularizing the public purpose and the possibility of doubt cannot be ruled out, the constitutional courts in exercise of jurisdiction under Article 226 or 136 should not, as a matter of course, deal a lethal blow to the entire proceedings based on the theoretical or hypothetical grievance of the petitioner. It would be sound exercise of discretion to intervene when a real and

> substantial grievance is made out, the non-redressal of which would cause prejudice and injustice to the aggrieved party. Vagueness of the public purpose, especially, in a matter like this where it is possible to take two views, is not something which affects the jurisdiction and it would, therefore, be proper to bear in mind the considerations of prejudice and injustice."

16. The Hon'ble Apex Court in a case titled as ***Union of India v. Dr. Kushala Shetty & others reported in (2011)12 SCC 69***, while adjudicating upon the validity of the acquisition proceedings carried on by NHAI for the widening of national highway observed as follows:

> "Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of

> judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project , if it is found to be ex facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained."

Discussion/ Analysis

17. Keeping in mind the observations made by the Apex Court in the judgements (supra), and upon a perusal of the record of the case in hand, indisputably what emerges there from is that the official respondents initiated acquisition proceedings qua land in question by issuance of a notification under section 4 (1) dated 23.12.2016 of the Act for construction of road in question under PMGSY Scheme 2016-17 and that the appellants had raised objection thereto whereupon after affording personal hearing to all concerned including the petitioners a detailed report came to be submitted by the Collector / respondent No. 3 to the Revenue Department on 09.08.2017 for issuance of a declaration under sections 6, 7 and 17 which came to be accorded on 13.09.2017. What emerges further is that official respondents found that at the initial takeoff point of the proposed road more than 100 number of families were likely to be affected due to the construction of the said road which necessitated change of alignment of takeoff point. The aforesaid change of alignment has been approved by the Government of India, Ministry of Rural Development Department, Rural Connectivity Division Krishi Bhavan, New Delhi vide communication dated

26.09.2019 conveyed to Public Works Department (R&B) Government of Jammu and Kashmir, after the official respondents examined the matter thoroughly and recommended the change of alignment to the Government of India.

18. The grievances lodged by the appellants / writ petitioners before the writ court qua the notification under section 4(1) inasmuch as the grievance about damage likely to be suffered by them on account of the acquisition of land for public purpose viz construction of road in question admittedly are shown to have been addressed by the official respondents upon filing of their objections under section 5-A of the Act inasmuch as while affording them an opportunity of hearing. The contentions and grievances raised and lodged by the writ petitioners/ appellants in regard to above have been lucidly and validly dealt with by the writ court in the impugned judgement turning down the said contentions and grievances. The perusal of the record of the case tend to show that the grievances and allegations so raised and alleged by the appellants / petitioners are theoretical and hypothetical and not real and substantial in nature.

19. Further a perusal of the record of the case reveals and suggests that neither any prejudice to the appellants /writ petitioners is demonstrable nor could same be reasonably inferred qua the acquisition proceedings undertaken by official respondents in furtherance of a public purpose viz construction of a much needed road serving the needs of thousands of people of the area as against less than 10 appellants /writ petitioners herein. Thus in

view of the observation of the Hon'ble Apex Court in **Pratibha Nema's case (supra)** supra striking down the notification under section 4(1) of the Act in the facts and circumstances of the case would be unjust and inappropriate.

20. The allegations of malafides alleged by the writ appellants /writ petitioners herein qua the whole process of acquisition in question also has been very well dealt with by the writ court in the judgement under challenge leaving no scope for this court to intervene and interfere thereto.

21. Lastly it goes without saying that the consistent view of the constitutional courts in the matters of land acquisitions has been that the viability or feasibility in the process of acquisition does not fall with the domain of courts unless it exfacie is found to be contrary to law or is tainted with palpable malafides. Reference in this regard to the judgement of the Apex court titled as "**State of UP and Ors Vs. Johri Mal reported in (2004) 4 SCC 714** would be advantageous wherein following has been observed:

> "The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statue as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is

not intended either to review governance under the rule of law or do the courts step into the areas exclusively reserved by the suprema lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court."

22. A Perusal of the record of the case makes it abundantly clear and demonstrable that in the whole process of acquisition undertaken by the official respondents it had been less than 10 numbers of writ petitioners who felt aggrieved thereof when most of the other land owners/ residents seemingly did not challenge the said acquisition. In such kind of a situation striking a lethal blow to the entire proceedings while invoking extraordinary writ jurisdiction had been found not to be advisable by the Apex Court.

23. As a conspectus of what all has been noticed, discussed and analyzed hereinabove, the judgment under challenge does not call for any interference. The instant appeal as such fails and entails dismissal. **Dismissed.**

(Javed Iqbal Wani)
Judge

(Rajesh Bindal)
Chief Justice (Acting)

JAMMU

28.12.2020

Ishaq

Whether the Order is speaking? Yes
Whether the Order is reportable? Yes

RAJ KUMAR
2020.12.28 15:06
I attest to the accuracy and
integrity of this document