HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

…

RFA no.10/2023
c/w RFA no.09/2023

Reserved on: 19.07.2024

Pronounced on: 27.09.2024

Abdul Salam Dar aged 78 years S/o Ghulam Rasool Dar R/o Brakpora Tehsil & District Anantnag, Kashmir

…….Appellant(s)

Through: Mr Khan Sameer, Advocate

Versus

1. Union Territory of J&K through Commr/Secy to Govt. Revenue Deptt. Civil Sectt. Sgr/Jmu
2. Collector, Land Acquisition, Anantnag
3. National Highway and Infrastructure Development Corporation Limited through General Manager, NHIDCL Project Management Unit near JAKFED Anantnag

……Respondent(s)

Through: Mr Ilyas Nazir Laway, GA
Mr Faheem Nisar Shah, GA

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. These two appeals have arisen out of common judgement dated 19th September 2022. Let me first take up appeal, being RFA 10/2023.

RFA no.10/2023

2. This Civil First Appeal under Section 52 of the Land Acquisition Act is directed against the Award dated 19th September 2022, passed by Principal District Judge, Anantnag (for short "*Trial Court*") on File Nos. 1/Reference and 2/Reference, by which reference petitions made by Collector, Land Acquisition, Anantnag, under Section 18 have been

dismissed on the ground of being time barred and for setting-aside the same.

3. I have heard learned counsel for parties and considered the matter.

4. The grounds of challenge, *inter alia*, are that impugned award is bad in the eye of law; that Trial Court has not framed any issue regarding claim of appellants being time barred; that at the time of approaching Collector, Land Acquisition, Anantnag, appellant filed application for condonation of delay; that appellant could not approach Collector within time as he was having no knowledge about Section 18 of Land Acquisition Act; that since no award has been framed in the matter by Collector, as such, appellant could not approach Collector within time but this aspect of the matter has been observed in breach by Trial Court; that due to domestic problems, appellant could not approach Collector within time; that appellant being illiterate was having no knowledge that application had to be filed within six months, but this aspect of the matter has not been taken into consideration by the Trial Court while passing impugned award; that respondents are meant to respect and implement the law and comply with the same and safeguard common law rights and constitutional rights of the person; that no notice under Section 4(1) has been issued by respondents; that there has been no publication through beat of drum or through local panchayat and Patwari; that notice has not been published in any newspaper; that publication through Government Gazette also seems to have been ignored; that no opportunity of being heard has been provided to landholder/appellant in terms of section 5(a) of Land Acquisition Act; that there does not seem to be any report prepared by Collector in terms

of Section 5(A) for submission to the Government for taking the decision with regard to acquisition of land; that declaration required to be made under Section 6 and further directions to Collector to take further action has been issued by Financial Commissioner in terms of SRO 177, by which powers have been vested in him to issue declaration under Section 6 and 7 of the Act; that declaration under Section 6 has not been issued by respondents; that Section 17 of Land Acquisition Act provides power to Government to direct Collector in case of urgency to take possession of land needed for public purpose on expiration of 15 days from publication of notice mentioned in Section 9(1) of the Act; that appellants were deprives of right of hearing under Section 5-A without dispensation of such hearing as provided under the last proviso to Section 17 of the Act.

5. From perusal of file, it is evident that land measuring 43 Kanals 08 Marlas came under acquisition for alignment of Anantnag Simthan Kishtwar Road. Notification under Section 4 of Land Acquisition Act was made on 18th July 2005 read with corrigendum dated 24th August 2011, calling objections from interested persons, which, on receipts, were disposed of and the case was recommended for issuance of declaration under Section 6&7 of Land Acquisition Act. Notification under Section 9 and 9A was issued. None are said to have filed objections within stipulated period of time. Private Negotiation Committee (PNC) was held by Deputy Commissioner, Anantnag, on 17th January 2007. Land measuring 02 Kanals 14 Marlas under Sruvey no.477 min belonging to Abdul Salam Dar S/o Ghulam rasool Dar R/o Brakpora, Anantnag, situate at Brakpora, Anantnag, also came under

alignment of Anantnag-Simthan Kishtwar Road. The award amount with respect whereof came @ Rs.5.00 Lacs per Kanal, which they received under protest. Application under Section 18 was moved for making reference to civil court. Accordingly, Collector, Land Acquisition, Anantnag, made reference under Section 18 to the Trial Court.

6. Before the Trial Court objections/written statement was filed NHIDCL. Amended petition was filed, stating that 02 Kanals 14 Marlas under Sruvey no.477 and land measuring 10 Marlas under Survey no.436 min situate at Brakpora, Anantnag, belonging to appellant was acquired. Amended written statement was filed. The Trial Court on considering rival contentions of parties framed following issues:

   (i) Whether the land measuring 03 kanals 04 marlas falling under survey no.477 situated at Brakpora, Anantnag, is owned by applicant, Ab. Salam Dar and same was notified on 18.08.2005 by the Collector, Land Acquisition, Anantnag, and acquired in March 2012 for the construction of Kishtwar-Simthan Anantnag road and the payment of compensation was taken by application under protest? OPP

   (ii) Whether the applicants namely Mohd Ramzan Dar and ors are co-sharers/joint owners of the land measuring 01 kanal 02 marlas falling under survey no.534 min and the land measuring 16 marlas falling under survey no.527 situated at Ulbeg Nowgam Anantnag which was notified on 18.08.2005 and payment were taken separately by the applicants under protest>? OPP

   (iii) Whether the land along with the structures existing thereon including the houses building and shops were acquired by the Collector Land Acquisition Anantnag? OPP

   (iv) Whether the compensation @ Rs.6.25 Lacs per kanal for the land, Rs.9.70 lacs for residential and Rs.8.25 lacs for Agriculture

area for village Kadpora and Donipawa acquired by the Collector Land Acquisition Anantnag in the year 2012 has been paid to the said land owners? OPP

(v) Whether the applicants have neither attended the meeting nor negotiated with the Collector Land Acquisition, Anantnag, and its subordinate members with respect to acquisition of land and its market value and the applicant has always shown his resistance regarding the price value of the land and payment received under protest? OPP

(vi) Whether the applicants have taken the compensation for their land out of their own free will and consent after proper deliberation and negotiations? OPR

(vii) Whether the compensation has been given to the applicants as per prevailing market rates at the time of acquisition proceedings after proper consent from the applicants? OPR

(viii) Whether the indenting department has been given the amount/ compensation to the collector as per the demand of Collector who has properly assessed the present market rate of the land and structures at the time of acquisition proceedings? OPR

(ix) Relief.

7. A vehement contention was made by respondents before the Trial Court that despite plea of limitation in preferring application for reference by claimant raised in objections, the issue with respect whereof was not framed although it being an important issue. As a consequence of which, both parties advanced their arguments vis-à-vis delay in filing application for reference.

8. Section 18 of Land Acquisition Act provides that any person interested, who has not accepted award, may make a written application to Collector for referring the matter to Collector for determination of the Court with respect to his objections about measurement of land, or

about amount of compensation, or about the persons to whom it is payable or about apportionment of compensation among the persons interested. Such an application for reference containing grounds to object to the award is to be made by a person within six weeks from the date of award issued by the Collector if such a person was present or represented before the Collector at the time when the award was made, or within six weeks from the date of receipt of notice from the Collector under Section 12 (2) or within six months from the date of the Collector's award, whichever period shall first expire.

9. When we see in the present case, private negotiation is claimed to have taken place on 29th January 2008. This fact is evident from minutes of private negotiation meeting held on 29th January 2008. It is shown therein that claimants/landowners had agreed for Rs.5.00 Lakh per kanal as compensation, but appellant denied the said fact. Nevertheless, he had received compensation under protest. As is evident from the record, land had been acquired way back in the year 2012. Admission position of appellant is that compensation for acquired land had been received under protest much before acquiring of land in March 2012. It is, thus, contention of petitioner that he received compensation under protest much before the year 2012. This would indicate and show that appellant had knowledge of award/private negotiation. He filed application on 4th July 2012 before Collector for reference in terms of Section 18 of Land Acquisition Act.

10. Perusal of application made by appellant before Collector for reference does not show the reasons for delay in making application after limitation period. It is simply submitted by appellant in his application

that he is owner/proprietor of land measuring 02 Kanals 14 Marlas which was notified on 18th August 2005 and payment was taken by him under/on protest and finally land under question was acquired in the month of March 2012. On his own showing, appellant was well aware about issuance of award when he received the compensation, may be, under protest, but he did not file application for more two years. He has not given any cogent or material reason for not approaching making application under Section 18 of Land Revenue Act for reference. Thus, the Trial Court has rightly dismissed appellant's application.

11. For the reasons discussed above, the instant appeal fails and is, accordingly, **dismissed**.

12. Appeal, being RFA no.09/2023, being akin to above one, is, as such, **dismissed** on same lines.

13. Copy be sent down.

(Vinod Chatterji Koul)
Judge

Srinagar
27.09.2024
Ajaz Ahmad, Secy.

Whether approved for reporting? Yes/No.

HIGH COURT
JAMMU & KASHMIR AND LADAKH