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Regular

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

WP(C) 1139/2023 CM(911/2026)

GHULAM NABI RATHER AND OTHERS

….. Petitioner (s)

Through: Mr. J. H Reshi, Advocate.

V/s

UNION TERRITORY OF J AND K AND OTHERS

……. Respondent(s)

Through: None.

Coram:

Hon'ble Mr. Justice Sanjay Dhar, Judge

ORDER (ORAL)

19.11.2026

1. The petitioners, through the medium of present petition, have challenged Notification bearing No. 305-13/LA/ERA/2019 dated 29.11.2019 under Section 4 (1) of the J&K Land Acquisition Act for acquisition of land measuring 01 Kanal and ½ Marlas comprised in Khasra No. 107 situated at Pantha Chowk, Srinagar. Further direction commanding the respondents to initiate acquisition proceedings in respect of the aforesaid land in accordance with Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter the Act of 2013).

2. The petitioners claim that they are the owners in possession of the land which is subject matter of the impugned Notification. It has been submitted that the said land was required by the Department of J&K Economic Reconstruction Agency for public purpose of balance work for construction of surface water drainage system in Athwajan Catchment on National Highway Bypass at Srinagar. Accordingly respondent No. 5-Director, J&K Economic Reconstruction Agency, Kashmir placed indent vide communication No. ERA/DK/04-A/2865-2870 dated 20.11.2019 with the Collector, J&K Economic Reconstruction Agency i.e, respondent No. 7 asking him to acquire the land in question. It has been further submitted that respondent No. 7/Collector, J&K Economic Reconstruction Agency obtained Shajra Khasra of the land in question from the Tehsildar concerned.
3. It has been submitted that without adhering to the follow up procedure, the compensation of the land came to be fixed by the Committee of Officers at Rs. 13.00 lacs and the petitioners were asked to collect the aforesaid compensation amount, but the offer was declined by the petitioners. It has been submitted that the land of the petitioners has high commercial value as such the offer made by the respondents was not acceptable to them and in these

circumstances, the respondents were obliged to acquire the land in accordance with law which was applicable at the relevant time and not in accordance with Jammu and Kashmir Land Acquisition Act which was repealed with effect from 30th October, 2019 in terms of J&K Reorganization Act, 2019.

4. The petitioners on the basis of aforesaid grounds have sought compensation for the land utilized by the respondent-Economic Reconstruction Agency in accordance with the Act of 2013.
5. Respondent No. 4 to 7 have filed their reply to the writ petition in which it has been submitted that the land measuring 01 Kanal and ½ Marla as per site plan was needed by J&K ERA for completion of balance work for construction of surface water drainage system in Athwajan Catchment on National Highway Bypass at Srinagar for construction of outfall channel and chamber at Athwajan. Accordingly, an indent dated 24.10.2019 was placed before Collector Land Acquisition, J&K ERA, in response to which, the Collector requested Director J&K ERA to place the indent before District Collector, Srinagar for processing of acquisition of said land. It has been submitted that the Director Kashmir, J&K ERA placed indent vide communication dated 20.11.2019 with District Collector, Srinagar and not with Collector J&K ERA whereafter

District Collector, Srinagar vide communication dated 28.11.2019 asked the Collector Land Acquisition, J&K ERA to acquire the said land as per the J&K Land Acquisition Act, 1990.

6. It has been submitted that the Tehsildar Pantha Chowk vide Communication dated 07.12.2019 forwarded the revenue documents. It has been further contended that the acquisition proceedings have been initiated by following due process of law and Notification under Section 4(1) of the J&K Land Acquisition Act, 1990 has been issued by the collector, Land Acquisition, ERA vide Communication dated 29.11.2019 which has been published in the newspaper. It has been submitted that in the 19th meeting of the Divisional Level Committee, an amount of Rs. 13.00 lacs per kanal has been approved as compensation for acquisition of the aforesaid land.
7. Heard learned counsel for the petitioners and perused the record.
8. So far as the factual aspects of the matter are concerned, the same are not in dispute. It is an admitted case of the parties that the land forming subject matter of the present writ petition has been utilized by the respondent-ERA for construction of outfall channel and chamber at Athwajan. It is also admitted case of the parties that no compensation has been paid to the petitioners for the said land till

date. The respondents have admitted that the process for acquisition of the land in question was set into motion by issuance of Notification under Section 4(1) of the J&K Land Acquisition Act on 29.11.2019.

9. The J&K Land Acquisition Act stands repealed in terms of J&K Reorganization Act, 2019 which has come into effect from 31.10.2019. Thus, with effect from 31.10.2019, J&K land Acquisition Act stands repealed and it has been substituted by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. As per Clause (15) of Removal of Difficulties Order issued vide S.O. 3912 (E) of 2019 dated 30.10.2019 anything done or any action taken including any notification issued or order, rule or appointment made during the period between the 5th August, 2019 and the appointed day shall, be deemed to have been valid and operative as if such things had been done or actions had been taken in accordance with law. Similarly, as per Clause (14) of the said order, anything done or any action taken *inter alia* any notification issued under any law shall be deemed to have been done or taken under the corresponding provisions of Central Laws. However, in the present case, the Notification issued under Section 4(1) of the J&K Land Acquisition

Act which is first step towards acquisition of the land, was issued when J&K Land Acquisition Act had ceased to be in operation. Therefore, Removal of Difficulties Order dated 31.10.2019 cannot save the action which has been taken by the respondents by issuing the Notification under Section 4(1) of the J&K Land Acquisition Act.

10. The action taken by the respondents is under the repealed law and as such, the same cannot be sustained in the eyes of the law. Once the Central Act, viz Act of 2013 had come into operation at the time when the respondents decided to institute acquisition proceedings in respect of the land in question, they had no option but to proceed in accordance with said Act and not in accordance with the repealed Act.

11. For what has been discussed hereinabove, the writ petition is allowed and the impugned Notification issued under Section 4(1) of the J&K Land Acquisition Act dated 29.11.2019 is quashed. The respondents are directed to proceed for acquisition of the land which is subject matter of the present writ petition by resorting to the provisions contained in the Act of 2013. The entire proceedings shall be concluded by the respondents within a period of six months

from the date a copy of this order is made available to them so that the compensation is paid to the petitioners

12. Disposed of as above.

(Sanjay Dhar)
Judge

SRINAGAR
19.11.2026
Aasif

HIGH COURT
JAMMU & KASHMIR AND LADAKH

Whether order is speaking Yes/No

Whether the order is reportable Yes/No