

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

OWP No. 289/2018

Reserved on 19.04.2023.

Pronounced on 25 .04.2023.

Mohd Sharief and others

.....petitioners

Through :- Mr. M.K.Raina Advocate.

V/s

State and others

.....Respondent(s)

Through :- Mr. R.S.Jamwal AAG.

Mrs. Monika Kohli Sr. AAG

Mr. M. Tariq Mughal Advocate.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

SANJEEV KUMAR, 'J'

CM No. 4061/2019

For the reasons stated in the application, the same is allowed.
Accordingly, Mohd Amin Shah is impleaded as party respondent No.5.

OWP No. 289/2018

1 The petitioners are aggrieved of and have called in question the order of Collector Land Acquisition (SDM), Gandoh bearing No. 476-78/LAC dated 09.01.2018 whereby the payment made in favour of the petitioners in terms of final award dated 12.11.2010 is sought to be recovered from the petitioners and Tehsildar Balessa has been directed to initiate recovery proceedings under the Jammu and Kashmir Land Revenue Act, 1996.

2 Briefly stated the facts leading to filing of this petition are that, for construction of Changa-Thaloran Road, PMGSY Department of UT of Jammu and Kashmir through its Executive Engineer Division Doda-II Kishtwar placed an indent for acquisition of land on 24.05.2008. The Collector Land Acquisition, Gandoh initiated the proceedings under the Jammu and Kashmir Land Acquisition Act and passed a final award dated 12.11.2010 acquiring the

land measuring 36 kanals and 16 marlas in village Thaloran. In the year 2013, with a view to construct 50 meters span through type steel plate Girder bridge on Changa-Thaloram Road, a fresh indent was placed before the Collector Land Acquisition, Gandoh for acquiring the additional land. Consequent upon the indent received, the Collectorate acquired 2 kanals and 2 marlas of land in terms of final award passed by the Collector Land Acquisition, Gandoh on 05.10.2015. As per the final award issued by the Collectorate, land measuring 7 marlas in khasra No. 393 min belonging to the petitioner Noor Din, land measuring 1 marla in khasra No. 511/405 min belonging to the petitioner Ghulam Qadir and the land measuring 09 marlas in khasra No. 511/405 min belonging to the petitioner Mohd Sharief was acquired.

3 After passing of the final award, LB-10 verification was also got conducted from Tehsildar Bhalessa. However, at the time of disbursement of compensation, one Mohd Amin Shah lodged a claim before the Collectorate vide his application dated 02.12.2015 that the land acquired for construction of one abutment of the bridge is though shown falling in khasra No. 511/405 min but actually, the abutment has been constructed in the adjoining khasra No. 510/405 min which belongs to him. He, therefore, prayed for re-verification and proper demarcation of the land acquired. Upon receiving the application from the said Mohd Amin Shah, Collectorate directed Naib-Tehsildar Changa to verify the matter and submit a report. Naib-Tehsildar, Changa submitted a report of the Patwari Halqa Kilhotran on 31.12.2015 which indicated that the claim lodged by Mohd Amin Shah was baseless. While Mohd Amin Shah was agitating the issue of identity of the land utilized for construction of one of the abutments of the bridge, the petitioners approached the Collectorate to release the compensation in their favour as per the final award passed by the

Collectorate. The Collectorate once again got an enquiry conducted through Naib-Tehsildar Gandoh. The report of Naib-Tehsildar, Gandoh dated 25.01.2016 submitted to the Collectorate reiterated that the bridge had been constructed on the land belonging to the petitioners. The Collector land Acquisition, Gandoh personally visited the spot on 13.02.2016 and after conducting spot verification from the residents of Thaloran, released the compensation in favour of the petitioners in terms of the award. The matter, as was expected, did not end, for, Mohd Amin Shah kept visiting the Collectorate pressing his claim that the land belonging to him had been utilized for the construction of bridge without any acquisition and payment of compensation to him.

4 In the month of September 2017, the PMGSY authorities started the construction of retaining wall near the western abutment of the bridge. Mohd Amin Shah, who had been claiming compensation for the land used in the construction of abutment, created hindrance and got the construction work stopped. He prayed for fresh demarcation of the land to unearth the truth. On the persistence of Mohd Amin Shah and with a view to put quietus on the matter, the Collector Land Acquisition, Gandoh carried on the fresh exercise of demarcation. On 11.10.2017, the team consisting of Naib-Tehsildar, Changa, Reader/GQ of SDM office and Patwari Halqa concerned demarcated the land acquired very minutely. This time, the Committee of the Revenue Officers/Officials came to the conclusion that the claim lodged by Mohd Amin Shah was factually correct. During the demarcation, the Committee found that the khasra No. 405 was split in three parts i.e 509/405, 510/405 and 511/405. Khasra No. 509/405 was in possession and under cultivation of the petitioner Noor Din and his family. Khasra No. 510/405 was in occupation and under

cultivation of Mohd Amin Shah and Khasra No. 511/405 min was in possession and under cultivation of the petitioners Ghulam Qadir and Mohd Sharief. The petitioner Noor Din was also having land in khasra No. 393 measuring 07 marlas which stood acquired, but only 3 marlas out of 7 marlas was found actually utilized on spot. The Committee, therefore, established that the western abutment of the bridge was not constructed in khasra No. 511/405 min, but had been actually constructed in forest/gair mumkin nallah adjacent to khasra No. 510/405 min and, therefore, the compensation paid to the petitioners Mohd Sharief and Ghulam Qadir amounting to Rs. 3,98,090/- was not genuine. The Committee also found that since, out of 07 marlas of land belonging to Noor Din falling in khasra No. 393, only 03 marlas had been actually utilized in the construction of the motorable road and, therefore, the compensation of 04 marlas of land amounting to Rs.126960/- too was a loss to the public exchequer.

5 On the basis of aforesaid report and without even providing an opportunity of being heard to the petitioners, the Collector Land Acquisition, Gandoh passed the impugned order directing the Tehsidlar Bhallesa to initiate the proceedings against the petitioners for their land acquired in terms of the final award, but not utilized on spot. The compensation amount paid to the petitioner Noor Din to the extent of 04 marlas was also sought to be recovered in the similar manner.

6 All the petitioners are before us in this petition and seek a Writ of Certiorari to quash the impugned order dated 09.01.2018 passed by the Collector Land Acquisition, Gandoh.

7 Having heard learned counsel for the parties and perused the material on record, we are of the view that after the Collector makes his award

under Section 11 of the State Land Acquisition Act, 1990 Act and files it in the Collector's office, the same shall be final and conclusive evidence as between the Collector and the persons interested of the true area and the value of the land and the apportionment of compensation among the persons interested. This is so evident from reading of Section 12 of the Act. The party aggrieved i.e a person interested who is aggrieved of the award and has not accepted it may by a written application to the Collector require the matter to be referred for determination of the Court, whether his objection be to the measurement of the land, the amount of compensation or the apportionment thereof. This right to seek reference by the person interested is provided under Sections 18 and 31 of the Act.

8 From a reading of the entire Land Acquisition Act, we could not find any other provision whereunder the Collector after passing of the award is empowered to recall or review the award or issue direction for payment of compensation or recovery thereof contrary to what is provided in the final award. We do not, however, dispute the proposition of law that if the possession of land acquired has not been taken over, the competent Authority may withdraw from and de-notify the acquisition.

9 It appears to be a simple case where the respondents have not utilized the acquired land or have utilized the land which they have not formally acquired. We also could not find anything from the reply affidavit filed by the respondents where they have even indicated their intention to de-notify the land acquired on the ground that they have not taken possession of such land.

10 In view of the admitted factual position obtaining in the matter, we are of the view that this petition deserves to be **disposed** by providing as under:

- (i) Petitioners who have already been paid the compensation for their land acquired in terms of the final award and have been divested of their proprietary land cannot be called upon to refund the same. The recovery proceedings in terms of the impugned order are vitiated in law ;
- (ii) The impugned order issued by the Collector Land Acquisition which, otherwise also, is issued without providing an opportunity of being heard to the petitioners is not sustainable in law and, therefore, deserves to be quashed.
- (iii) The respondents may initiate appropriate action for taking acquisition proceedings against the proprietary land of Mohd Amin Shah, if any, utilized for the construction of abutment of Thaloran Bridge or enter into private negotiations with Mohd Amin Shah to disburse him the compensation for such land.
- (iv) The unutilized acquired land, which, in terms of final award has vested and is in deemed possession of State, may be taken possession of if it has been encroached upon or reoccupied by the petitioners. The respondents are free to put it to beneficial use or dispose of if required.

Ordered accordingly.

(RAJESH SEKHRI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
25 .04.2023
Sanjeev

Whether order is reportable: Yes