

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

OWP No. 542/2012 (O&M)

Reserved on : 10.08.2023
Pronounced on : 19.08.2023

Gul Mohammad and ors.

.....Petitioner

Through: Mr. M. Y. Akhoon, Adv.

Vs

State of J&K and ors.

..... Respondents

Through: Ms. Nazia Fazal, Adv. vice
Mrs. Monika Kohli, Sr. AAG for R- 1 to 4.
Mr. Harshwardan Gupta, Adv. for R- 5 and 6.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

Prayer:

1. Petitioners through the medium of the present petition are calling in question the notification No. 84/ADC/Rbn of 2011-12 dated 20.10.2011 issued by respondent No. 4 under Section 4 of the J&K Land Acquisition Act, 1990 (for short, **the Act of 1990**) and also notification/Declaration No.25/DCR of 2011 dated 26.11.2011 issued under Section 6 of the Act of 1990 by respondent No. 3, besides challenging the public Notice No. 94/ADC/Rbn of 2011-12 dated 30.11.2011 issued by respondent No. 4 under Sections 9 and 9A of the Act of 1990.

2. Petitioners have sought declaration that all the proceedings initiated by the respondents for acquisition of the land in question measuring 01 kanal 17

Marlas falling under Khasra No. 729, land measuring 02 kanals 07 marlas falling under Khasra no. 729 min land, measuring 02 kanals and 05 marlas falling under Khasra No. 730, land measuring 09 kanals and 14 marlas falling under Khasra No. 731min and land measuring 04 marlas (02 marlas each of the petitioner No. 1 and 2) falling under Khasra no. 3219/683 situated at Village Khari (Seeran), Tehsil Banihal, District Ramban be declared as non-est in the eyes of law, besides seeking a writ of Prohibition.

Arguments on behalf of the counsel for the petitioners

3. The short submission which has been advanced by the learned counsel for the petitioners is that respondents while issuing the impugned notification under Section 4 of the Act of 1990 has not followed the procedure as envisaged under the Act of 1990 with particular reference to Section 6 of the Act of 1990.

4. Learned counsel appearing on behalf of the petitioners vehemently argued that said declaration in terms of Section 6 of the Act of 1990 shall be conclusive evidence that the land is needed for public purpose and after making such declaration the Government may acquire the land in the manner indicated in the aforesaid statutory provision. Learned counsel has laid much emphasis on the aforesaid provision of law which in unambiguous terms provides that it is only the satisfaction of the Government on the receipt of the report which is required with respect to the acquisition of the land for public purpose and in the instant case, respondent No. 3 in complete departure of the mandate procedure of Section 6 of the Land Acquisition Act have issued the declaration. Learned counsel further submits that satisfaction as envisaged in the aforesaid statutory provision is only required to be recorded by the

Government and that would mean the erstwhile Government of J&K and not any other authority/officer at district level like Deputy Commissioner in the instant case. Learned counsel with a view to substantiate his claim has referred to the impugned notification dated 25/DCR of 2011 dated 26.11.2011 wherein it is manifestly clear that Deputy Commissioner, Ramban has recorded his satisfaction in pursuance of the report furnished by the Collector Land Acquisition (ADC) Ramban vide No. 1009-14/ACQ/RPLY dated 18.11.2011 with respect to the fact that land is required for public purpose and the said satisfaction which has been recorded by the Deputy Commissioner is no satisfaction and thus entire proceedings which have commenced in pursuance of the impugned notification mentioned (supra) is nullity in the eyes of law.

5. Learned counsel appearing for the petitioners submits that it was incumbent on the part of the respondents to give wide publicity while issuing notification under Section 4 of the Act of 1990 and since no wide publicity has been done, the very purpose of the issuance of the notification under Section 4 get vitiated. Further case of the petitioners is that petitioners have filed objections under Section 5-A, but the same were not accorded any consideration and the petitioners have condemned unheard as no opportunity of being heard has been given to them. Learned counsel further submits that the question of being heard arises only in case notices as required under Sub Section 2 of Section 5-A of the Act of 1990 were ever issued. Learned counsel has relied upon law laid down by the Apex Court in case titled **Omkar Nath Khashoo v. State of J&K and ors.** reported as **1981 SriLJ 468** wherein it has been held that failure on the part of the Collector to comply with the provision by not giving hearing to the owners in support of their objections renders all

proceedings and subsequent thereto including under Section 6 without jurisdiction. The relevant paragraph is reproduced as under:

“The law is thus well settled that Sec 5-A is mandatory in character and failure on the part of the Land Acquisition Collector to comply with its provisions by not giving a hearing to the owner in support of his objections renders all proceedings taken subsequent thereto, including the notification issued u/s 6, without jurisdiction. I find no substance in Mr. Malik's contention that the only objection that an owner can take to the acquisition is with regard to the existence of the public purpose. Sec 5-A does not impose any limitation on the right of an owner to raise objection to the intended acquisition. He is entitled to raise any kind of objection, and once he has raised it within the time prescribed, he has a statutory right to be heard in support thereof irrespective of its nature or merit. An owner may, for instance, admit the public purpose and at the same time object to the acquisition of his land by pleading that such a public purpose may be more beneficially or economically met by acquiring some other land or by acquiring only a part of the land sought to be acquired.”

Arguments on behalf of the respondents.

6. Respondents, while filing the reply, have taken a stand that only such cases which involve the compensation of more than one crore has to be submitted to the competent authority and thus notification which has been issued by Deputy Commissioner under Section 6, being the competent authority, is valid in the eyes of law keeping in view the pecuniary jurisdiction of the case. Respondents with a view to reject the claim of the petitioner have relied upon SRO 235 dated 11.08.2009 which provides that the Government has authorized the Financial Commissioner (Revenue), Divisional Commissioner, and the Deputy Commissioner within their pecuniary jurisdiction for exercising the power under Sections 6 and 7 of the J&K Land Acquisition Act.

7. Respondents have taken a specific stand that objections in terms of Section 5-A of the Act of 1990 have been received in pursuance of issuance of notification under Section 4(1) of the Act of 1990 and the objections so filed

by the interested persons have been disposed of after hearing the interested persons. Respondents have further stated that SRO 235 was issued by the Government keeping in view the speedy acquisition of land for projects of national importance and payment of compensation without delay.

8. Although the foundation of the petitioners in the present petition is with respect to the violation of the procedure envisaged under Section 6 of the Act of 1990 and there is no specific reply in this regard while filing the objections, however, respondents on the other hand have placed reliance on SRO 235, which provides the pecuniary jurisdiction to adjudicate the issue by various officers only.

9. The instant petition was listed before this Court on 16.04.2012 and this Court has been pleased to direct the parties to maintain the status quo till next date and the said order continues to be operative till today as per the learned counsel for the petitioners.

10. This Court vide order dated 22.12.2022 has granted last and final opportunity to Mr. Harshwardhan Gupta, Advocate for filing reply, failing which, it was observed that right to file the same shall stand closed. Today, when the matter was taken up Mr. Gupta learned counsel appearing on behalf of respondents No. 5 and 6 submits that he want to adopt the reply already filed on behalf of respondents No. 1 to 4 for respondents 5 and 6 as well. His statement is taken on record. Ordered accordingly.

Legal Analysis

11. Having heard learned counsel for the parties and perused the material on record, I am of the opinion that decision of this petition hinges upon the determination of following questions:

(i) Whether the Deputy Commissioner exercising the powers of a particular district has been delegated with the power to make a declaration under Section 6 of J&K Land Acquisition Act, 1990 which could be conclusive evidence that the land is needed for public purpose.

(ii) Whether the satisfaction in terms of Section 6 of the Act of 1990 is required to be recorded by the Government or by the Deputy Commissioner that a particular land is needed for public purpose as envisaged under Section 6 of the Act of 1990.

12. With a view to appreciate the controversy in question, it would be apt to reproduce Section 6 of the Act of 1990 and SRO 235 dated 11.08.2009:

“6. Declaration that land is required for public purpose

- (1) When the Government is satisfied after considering the report, if any, made under Section 5-A, sub section (2) that any particular land is needed for public purpose, a declaration shall be made to that effect under the signature of the Revenue Minister or of some officer duly authorized in this behalf:
[Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid wholly or partly out of the public revenues of some fund controlled or manages by a local authority].**
- (2) The declaration shall be published in official Gazette, and shall stated the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate areas and where a plan shall have been made of the land, the place where such plan may be inspected.**
- (3) The said declaration shall be conclusive evidence that land is needed for a public purpose, and after making such declaration the Government may acquire the land in manner hereinafter appearing.”**

“SRO 235 is reproduced herein below for facility of reference:

“In exercise of the powers conferred by or section 6 and 7 of the Jammu and Kashmir Land Acquisition Act Svt. 1990 (X of 1990) and in supersession of Notification SRO 689 dated 20th December 1984 the Government hereby authorize Financial Commissioner (revenue), Divisional Commissioner and Deputy Commissioner within their pecuniary jurisdiction for purpose of the said section.”

13. From a bare perusal of Section 6 of Act of 1990, it is apparently clear that when the Government is satisfied after considering the report, if any, made under Section 5-A, Sub Section 2 that any particular land is needed for the public purpose, a declaration shall be made to that effect under the signature of

the revenue officer or some other officer duly authorized in this behalf and the said declaration shall be published in the official gazette besides stating the district or other territorial division in which the land is situated and also the purpose for which the same is needed, its approximate areas and where a plan shall have been made of the land, the place where such plan may inspected.

14. A bare perusal of Sub Section 1 of Section 6 of the Act of 1990 emphatically clears that a declaration under Section 6 is to be made when the Government is satisfied that land is needed for the public purpose and such declaration was required to be made under the signature of the Revenue Minister or some other Officer duly authorized in this behalf. In other words, Sub Section (1) of Section 6 envisages two essential requirements namely (i) recording of the satisfaction of the Government that the land is needed for the public purpose; and (ii) publication of such declaration under the signature of the Revenue Minister or by some other Officer duly authorized in this behalf.

15. From a bare perusal of the notification issued under Section 6, it is evident that no such satisfaction as envisaged under Section 6 has been recorded nor there is any reference in the impugned notification. However, the reference has been made that the satisfaction has been recorded by the Deputy Commissioner, Ramban on the basis of the report furnished by the Collector Land Acquisition Ramban which is alien to the procedure prescribed under the aforesaid statutory provision. Thus, the import of Section 6 is twin fold viz. recording of the satisfaction has to be by the Government is one part of the requirement and issuance of the declaration is another part of the statutory requirement of the provision and the procedure prescribed.

16. The recording of the satisfaction has to be by the Government alone and not by any other person or authority as the said power has not been delegated either to the Deputy Commissioner or to the Collector Land Acquisition to arrive at a satisfaction on behalf of the Government and once, the said satisfaction has been recorded by the Government, then the issuance of the notification/declaration can be either by the Revenue Minister or any other officer authorized to do so.

17. Record reveals that notification under section 6 has been issued by the Deputy Commissioner, Ramban who has himself recorded the satisfaction which is not permissible under law and the respondents while filing the objections have taken a specific stand in paragraph 8 of the reply that insofar as the issuance of the notification under section 6 by the Deputy Commissioner is concerned, he has been authorized, as such, to issue such notice vide SRO 235-36 dated 11.08.2009.

18. From a bare perusal of the aforesaid SRO, it is manifestly clear that the aforesaid SRO authorizes the Financial Commissioners, Divisional Commissioners and Deputy Commissioners to exercise the power under Sections 6 and 7 of the Act of 1990 in the context with making a necessary declaration under Section 6(1) of the Act of 1990, which otherwise is to be made under the signature of the Revenue Officers or from some other officer duly authorized in this behalf which, by no stretch imagination, can be construed that Government has delegated the power to record the satisfaction as envisaged under Section 6 of the Act of 1990 to the aforesaid officer. A bare reading of the aforesaid SRO reveals that Deputy Commissioner exercising the power of a particular district has been delegated with the power of the Revenue

Minister to make a declaration under Section 6 of the Act of 1990, but for all practical purposes, the power exercisable by the Government for recording satisfaction as to whether the land is needed for public purpose or not, has not at all been delegated to any authority. What is mandatory in terms of Section 6 of the Act of 1990 is that satisfaction ought to have been recorded by the Government and not by the Deputy Commissioner, as it has happened in the instant case.

19. Now this Court will deal with the questions framed hereinabove.

Question No. (i)

Whether the Deputy Commissioner exercising the powers of a particular district has been delegated with the power to make a declaration under Section 6 of J&K Land Acquisition Act, 1990 which could be conclusive evidence that the land is needed for public purpose.

20. In so far as question no. (i) is concerned, this Court is of the view that SRO 235 simply authorizes the Financial commissioner (Revenue), Divisional Commissioners and Deputy Commissioners to exercise the power under Sections 6 and 7 of the Act of 1990 in context with making the declaration under Section 6(1) of the Act which otherwise is to be made under the signatures of the Revenue Minister or some other officer duly authorized on this behalf. It cannot be construed to mean that the Government has also delegated its power to record satisfaction to the aforesaid officers. In fact, it cannot be so delegated in the absence of any recital to the effect. Thus, in view of the aforesaid SRO, the Deputy Commissioner has been delegated with the power of the Revenue Minister to make a declaration under Section 6(1) of the Act but the power exercisable by the Government for recording satisfaction as to whether the land is needed for public purpose or not has not been delegated.

Thus, the power to record satisfaction on behalf of the Government is not delegable to any officer.

21. Accordingly, I hold that Deputy Commissioner exercising the powers of a particular district has not been delegated with the power to make a declaration under Section 6 of J&K Land Acquisition Act, 1990 which is conclusive evidence that the land is needed for public purpose.

Question No. (ii)

Whether the satisfaction in terms of Section 6 of the Act of 1990 is required to be recorded by the Government or by the Deputy Commissioner that a particular land is needed for public purpose as envisaged under Section 6 of the Act of 1990.

22. Insofar as question no. (ii) is concerned, this court is of the view that the satisfaction, as envisaged in Section 6 of the Act of 1990, is only required to be recorded by the Government and that would mean the erstwhile Government of J&K and not any other authority/officer at district level like Deputy Commissioner in the instant case. The Deputy Commissioner is neither the Government nor the authority competent to record satisfaction as to whether a particular land is needed for public purpose or not. It is only when the Government is satisfied after considering the report that any particular land is needed for public purpose, a declaration has to be made to that effect under the signatures of the Revenue Minister or of some office duly authorized in this behalf.

23. It is pertinent to mention that the said declaration is conclusive evidence that the land is needed for public purpose and after making such declaration the Government may acquire the land in the manner indicated in the aforesaid statutory provision. Thus, it is only the satisfaction of the Government on the

receipt of the report which is required with respect to the acquisition of the land for public purpose and in the instant case, respondent No. 3 in complete departure of the mandate procedure of Section 6 of the land Acquisition Act has issued the declaration.

24. The record in the instant case reveals that satisfaction has been recorded by the concerned Deputy Commissioner who has issued the impugned notification and thus, the action of the concerned Deputy Commissioner is in flagrant violation of the mandatory procedure as envisaged under Section 6 of the Land Acquisition Act.

25. Accordingly, I hold that satisfaction in terms of Section 6 of the Act of 1990 is required to be recorded by the Government and not by the Deputy Commissioner that a particular land is needed for public purpose as envisaged under Section 6 of the Act of 1990.

26. Even otherwise also, the issue with respect to the recording of the satisfaction and the issuance of the notification under Section 6 is no more *res integra* in light of the law laid down by the Division Bench of this Court in ***OWP No. 1329/2012 titled, Virender Pandoh v. State of J&K and ors. [decided on 08.09.2021]***. The relevant paras are reproduced as under:

“17. In view of the aforesaid SRO, the Deputy Commissioner has been delegated with the power of the Revenue Minister to make a declaration under Section 6(1) of the Act but the power exercisable by the Government for recording satisfaction as to whether the land is needed for public purpose or not has not been delegated obviously as it is not delegable. The satisfaction in this regard has to be of the Government. The record produced before us does not contain any document which records the satisfaction of the Government in this regard.

25. The record does not contain any document recording the satisfaction of either the Governor or the Cabinet and that the satisfaction recorded by the Deputy

Commissioner in the light of SRO 235 is no satisfaction on the part of the Government.

26. In view of the aforesaid facts and circumstances, as declaration/notification under Sub Section 1 of Section 6 of the Act has been issued by the Deputy Commissioner without there being any satisfaction recorded by the State Government that the land is needed for public purpose, we find it difficult to sustain the said declaration.”

27. Again, the Division Bench of this Court in **OWP No. 816/2012** titled, **Bashir Ahmed Bhat and others vs. State and others** [decided on 02.12.2022]

has observed as under:-

“Obviously, the District Collector, Srinagar, is not the Government either under Jammu and Kashmir General Clauses Act, Svt. 1997, nor could it be so construed in terms of the business Rules framed by the Government under Section 43 of the Constitution of Jammu and Kashmir, as it was applicable at the relevant point of time. Without going much deeper into the issue, suffice is to say that the Deputy Commissioner/District Collector is neither the Government nor the authority competent to record the satisfaction as to whether a particular land is needed for public purpose or not.”

Conclusion

28. For the foregoing reasons, I find merit in this petition, and the same is accordingly, allowed. The impugned notification No. 84/ADC/Rbn of 2011-12 dated 20.10.2011 issued by respondent No. 4 under section 4 of the J&K Land Acquisition Act as well as Notification/Declaration No. 25/DCR of 2011 dated 26.11.2011 issued by respondent No. 3 under section 6 and public notice No. 94/ADC/Rbn of 2011-12 dated 30.11.2011 issued by respondent No. 4 under Section 9 and 9A of the J&K Land Acquisition Act are quashed.

29. As a necessary corollary, all the subsequent proceedings for acquisition undertaken by the respondents are also declared non-est in the eye of law, and therefore quashed. The quashment of acquisition proceedings initiated under the Act of 1990 by this Court shall not come in the way of the respondents to

acquire the subject land, if the same is needed for the public purpose by following strictly the provisions of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, which is in vogue.

30. The writ petition shall stand disposed of in the manner indicated above.

Jammu
19.08.2023
Paramjeet

(Wasim Sadiq Nargal)
Judge

Whether the order is speaking?

Yes

Whether the order is reportable?

Yes

