

Sr. No. 2
Suppl. List

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

**Reserved on: 29.04.2025
Pronounced on: 09.05.2025**

**LPA No. 262/2023
CM No. 7457/2024**

**Gazanfar Ali (Aged 68 years)
S/o Ghulam Mohi ud din
R/o Zakoora, Srinagar, Kashmir**

...APPELLANT

Through: - Mr. G.A. Lone, Advocate with Mr. Mujeeb Andrabi, Advocate
Vs.

- 1. Union Territory of Jammu & Kashmir through
Commissioner Secretary to Government, Revenue
Department, Civil Secretariat, Srinagar/Jammu**
- 2. Divisional Commissioner, Kashmir, Srinagar**
- 3. Deputy Commissioner/District Collector, Srinagar**
- 4. Collector/Assistant Commissioner (Revenue), Srinagar**
- 5. Custodian General, J&K, Srinagar**
- 6. Custodian, Evacuee Property Department, Kmr. Sgr.**
- 7. Tehsildar (North), Srinagar**
- 8. Station House Officer (SHO), Police Station Zakoora, Sgr.**
- 9. University of Kashmir through its Registrar, Srinagar**

...RESPONDENTS

Through:- Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Assisting counsel
Mr. Syed Faisal Qadri, Sr. Advocate with
Mr. Sikander Hayat, Advocate

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE**

JUDGMENT**Per: Sanjeev Kumar-J**

1. This intra-court appeal filed by the appellant arises out of an order and judgment dated 02.12.2023 passed by the learned Single Judge of this Court [“the Writ Court”] in OWP no. 882/2017 titled Gazanfar Ali v. State of J&K and others, whereby the writ petition filed by the appellant herein challenging the notification dated 25.05.2017 issued under Section 4(1) of the Jammu and Kashmir Land Acquisition Act [“the Act”] has been dismissed.

2. Briefly stating the facts leading to the filing of this appeal are that a piece of land measuring 15 Kanals 13 Marlas in Khasra no. 1355/919 and 5 Kanals 8 Marlas in Khasra No. 1356/9420 situate at Zakura in Srinagar [“the subject land”] was sought to be acquired for respondent no. 9 for construction of Basic Science College of Excellence. On the request of respondent no. 9, respondent no. 4 issued a notification under Section 4(1) of the Act for acquisition of the subject land.

3. Feeling aggrieved, the appellant filed OWP no. 882/2017 to throw challenge to the said notification. The challenge to the notification by the appellant was premised on the ground that the subject land was an evacuee property leased out to the appellant by respondent no. 5, the Custodian General, Jammu and Kashmir, Srinagar. The lease was to subsist for a period of fiftyfive (55) years. The appellant, after seeking permission from respondent no. 5 for raising the construction of the School and after obtaining building permission from the Srinagar Municipal Corporation, started raising the construction of the school building. While the construction was going on, the notification impugned in the writ petition came to be issued by respondent no. 4. The impugned notification issued under Section 4(1) of the Act was called in question by the appellant before the writ court on the following grounds:-

- (i) that respondent no. 4 who has issued the impugned notification is only an Assistant Commissioner (Revenue) and, therefore, not “the Collector” as defined under the Act;
- (ii) that the subject land is an evacuee property and, therefore, cannot be made subject matter of acquisition under the Act;
- (iii) that the impugned notification has not been published in the manner prescribed under Section 4 of the Act and, therefore all proceedings taken for initiating the process of acquisition are vitiated;
- (iv) that the impugned notification is actuated by malafide consideration, in that, the Indenting Department i.e. the University of Kashmir is already in possession of 300 Kanals of land and that there is more custodian land available in the vicinity of the University Campus which can be utilized for setting up of a College;
- (v) that with the coming into force of the Jammu and Kashmir Re-organisation Act, 2019, an extension of right to fair compensation and transparency in land acquisition, rehabilitation and Re-settlement Act, 2013 [“the Act of 2013”] to the Union Territory of J&K, a fresh process of acquisition is required to be initiated under the new Act.

4. The writ petition was contested by both i.e. the Indenting Department i.e., the University of Kashmir as also the other respondents including the Collector, by filing separate objections.

5. The writ court considered the rival contentions in the light of material on record including the record of land acquisition proceedings and came to the conclusion that the writ petition was devoid of any merit and deserved to be dismissed. The writ court considered all the issues raised by the learned counsel on behalf of the appellant. The writ court considered the grounds of challenge and answered the issues raised in the following manner:-

- (i) that vide SRO 213 dated 16.05.1966, the powers of Collector for the purposes of land acquisition have been vested on all territorial Assistant Commissioners and the said notification has been issued by the Government in exercise of powers under sub-section (4) of Section 6 of the Jammu and Kashmir Land Revenue Act. Similarly, the Government of Jammu and Kashmir has in exercise of its power under sub-section (5-A) of Section 6 of the Jammu

and Kashmir Land Revenue Act has issued SRO 461 dated 19.11.1985 conferring powers of the Collector on in as many as 22 Designated Officers which includes Assistant Commissioner (Revenue), Srinagar. The writ court, thus, concluded that respondent no. 4 was vested with the powers of the Collector under the Act to initiate acquisition proceedings and, therefore, the impugned notification issued by respondent no. 4 was within its jurisdiction.

- (ii) that the property of an evacuee vested in the Custodian is not immune or exempted from acquisition under the Act. To come to this conclusion, the writ court relied upon the *Saraswati Devi v. Delhi Development Authority and others*, (2013) 3 SCC 571 and *Delhi Administration v. Madan Lal Nangia* (2003) 10 SCC 321.
- (iii) that though the publication of Notification in the manner provided under Section 4(1) of the Act is mandatory, yet no grievance can be raised with regard to the validity of such notification by the interested person who has sufficient notice of the publication of the notification and has responded to the said notification by filing his objections thereto. The writ court found that the appellant being fully aware of Section 4(1) notification had submitted his objections and, therefore, cannot throw challenge to the notification on the ground that the same was not duly published;
- (iv) that it is not for the appellant to dictate to the Indenting Department as to which land is more suitable for establishing the College. The University has also denied that the land to which reference is made by the appellant in the petition is adjacent to the University Campus. The writ court, thus, concluded that the question as to whether the land which is subject matter of acquisition was suitable for the needs of the respondent-University cannot be made subject matter of determination in the proceedings under Article 226 of the Constitution of India. The Court noted that the appellant had already filed objections to the impugned land acquisition notification and, therefore, the said aspect could be considered by the Collector at the time of deciding the objections of the petitioner.
- (v) Relying upon the judgment of the Hon'ble Supreme Court in *Indore Development Authority v. Manoharlal and others*, (2020) 8 SCC 129, the writ court held that once the authorities are disabled from taking a process to its logical conclusion by the stay order passed by a Court at the instance of the litigant, such litigant cannot be permitted to

take advantage of a situation which is his own creation. The writ court, thus, found that the acquisition proceedings could not be concluded because of the interim stay obtained by the appellant by filing the writ petition.

6. The writ court, after discussing elaborately the rival contentions on the issues raised, concluded that the appellant had no case to maintain the petition and, accordingly, vide impugned order and judgment, dismissed the petition.

7. Before us, Mr. Lone, learned counsel appearing on behalf of the appellants, re-iterated his arguments which the writ court has very elaborately considered in the impugned judgment. However, Mr. Lone very fairly conceded the decision of writ court on Issue Nos. (1), (2) and (5) and restricted his arguments only to the Issue Nos. (3) and (4).

8. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the Issue Nos. (3) and (4), which were vehemently agitated by Mr. Lone before us, have been very correctly decided by the writ court.

9. So far as Issue No. (3) is concerned, the same pertains to the validity of notification issued by respondent no. 4 under Section 4(1) of the Act. The notification is attacked by the appellant on the ground that the publication in terms of sub-section (1) of Section 4 of the Act has not been made strictly in the manner provided in the said sub-section. It was argued that respondent no. 4 was under an obligation to publish the notification in the locality where the land was situated by affixing a public notice at convenient places in the locality. The notice was also required to be published in two Daily Newspapers having largest circulation in the locality, out of which, atleast, one has to be in the regional language. Besides the above modes of publication, the notice was also required to be published in the official gazette. The notice was, it is contended, required to be published by following all the three modes and such requirement of sub-section (1) of Section 4 of the Act was

mandatory in nature. It was, thus, argued that failure of respondent no. 4 to publish the notice under Section 4 (1) of the Act in the manner provided therein has rendered the notice null and void in the eye of law. Strong reliance is placed by Mr. Lone on the judgment of ***Khub Chand and others v. State of Rajasthan and others, AIR 1967 SC 1074, J&K Housing Board and another v. Kunwar Sanjay Krishan Kaul and others, (2011) 10 SCC 714 and Farooq Ahmad Band and ors. v. State of J&K and ors, 2017 (1) JKJ 552 [HC].***

10. The writ court has elaborately discussed this issue in the light of law laid down by the Hon'ble Supreme Court and has arrived at a correct conclusion that the appellant being aware of the impugned notification and having filed objections thereto cannot be permitted to find fault with the impugned notification on the ground that the same has not been published by following all the modes prescribed in sub-section (1) of Section 4 of the Act.

11. While we see no reason to take a view different from the one taken by the writ court, yet to supplement what has been held by the writ court, we would like to invite reference to a judgment of Hon'ble Supreme Court in the case of ***Special Deputy Collector, Land Acquisition, CMDA v. J. Sivaprakasam and others, (2011) 1 SCC 330***. In the aforesaid case, which was decided by Hon'ble Supreme Court on 18.11.2010, i.e. immediately after the decision of ***Kunwar Sanjay Krishan Koul***, the Hon'ble Supreme Court held that total non-compliance with the requirements of Section 4(1) of the Act cannot effect the validity of preliminary notification or the consequent proceedings where the person aggrieved was well aware of the issuance of notification and had responded to the said notification by filing his objections. It is trite that object of issuing a notification under Section 4 of the Act is three fold; firstly, it is the public announcement by the Government and a public notice by the Collector to the effect that the land is needed or likely to be needed by the Government for the public purpose mentioned

therein; secondly, it authorizes the Officer either generally or specially empowered by the Government in this behalf and for his servant and workmen to enter upon and do all such acts as enumerated in sub-section (2) of Section 4 of the Act and; thirdly, to notify to the interested persons about the proposal for acquisition so that they become aware of such proposal and are given sufficient opportunity to object and respond to the proposal by filing objections.

12. In the instant case, there is no dispute with regard to the fact that the impugned notice issued under Section 4(1) of the Act was published in two Daily Newspapers i.e., “Daily Greater Kashmir” and Urdu “Daily Aftab”, both dated 02.06.2017. The notification has also been affixed in the concerned locality. It is true that the notification as mandated by Section 4(1)(b) of the Act has not been published in the regional language and that may be pointed as a shortcoming in the due publication of the notification. However, in view of the fact that the appellant had got the knowledge of publication of the notice well in time and had also submitted his objections to the proposal for acquisition of the subject land, it does not lie in the mouth of the appellant to contend that he has been seriously prejudiced by the failure of respondent no. 4 to publish a notice in the regional language. It is also not the case of the appellant that he can understand only the regional language and cannot read and write or understand English or Urdu. As is held by the Hon’ble Supreme Court in the case of J. Sivaprakasam, the acquiring authority need not prove actual notice of the proposal to acquire under Section 4 of the Act on the person challenging the acquisition. Such notice can also be by way of implied notice or constructive notice. What is held by the Hon’ble supreme Court in paragraphs 31 and 36 is reproduced hereunder:-

“31. The acquiring authority need not prove actual notice of the proposal to acquire under Section 4(1) of the Act, to the person challenging the acquisition,. As the purpose of

publication of public notice proved in Section 4(1) of the Act is to give notice of the proposal of acquisition to the persons concerned, such notice can also be by way of implied notice or constructive notice. For this purpose, we may refer to the difference between actual, implied and constructive notice:

1. When notice is directly served upon a party in a formal manner or when it is received personally by him, there is actual notice.

2. If from the facts it can be inferred that a party knew about the subject-matter of the notice, knowledge is imputed by implied notice. For example, if the purpose of the notice is to require a party to appear before an authority on a particular date, even though such a notice is not personally served on him, if the person appears before the authority on that date or participates in the subsequent proceedings, then the person can be said to have implied notice.

3. Notice arising by presumption of law from the existence of certain specific facts and circumstances is constructive or deemed notice. For example, any person purchasing or obtaining a transfer of an immovable property is deemed to have notice of all transactions relating to such property effected by registered instruments till the date of his acquisition. Or, where the statute provides for publication of the notification relating to a proposed acquisition of lands in the gazette and newspapers and by causing public notice of the substance of the notification at convenient places in the locality but does not provide for actual direct notice, then such provision provides for constructive notice; and on fulfillment of those requirements, all persons interested in the lands proposed for acquisition are deemed to have notice of the proposal regarding acquisition.

36. It is significant to note that there is no averment in the writ petition that the respondents were not aware of the proposed acquisition. It is evident that they were aware of the notification. It is also inconceivable that Respondents 5 to 11 who knew about the proposed acquisition would not have informed Respondents 1 to 4 about the proposed acquisition. Be that as it may. Therefore, even if the publication in two regional language newspapers is considered to be not in compliance with the requirements of Section 4(1), it cannot affect the validity of the preliminary notification or the consequential proceedings in regard to Survey Nos. 186/1 and 186/2.”

13. This judgment of the Hon'ble Supreme Court is delivered after the judgment in **Kunwar Sanjay Krishan Koul's** case. Both the judgments are by the Benches of co-equal strength. **Kunwar Sanjay Krishan Koul's** judgment is otherwise distinguishable on facts. As is rightly held by the writ court that in **Kunwar Sanjay Krishan Koul**, the corrigendum issued for enlarging the area of acquisition was not published at all. The land owners were the residents of Delhi and no effort had been made by the Collector to send them notices. Otherwise also, the issue as to whether a person who is well aware of the issuance of notification under Section 4(1) of the Act and has also objected to the proposal by filing objections can be permitted to challenge the preliminary notification on the ground that the same has not been duly published, was not the subject matter of determination in the case of **Sanjay Krishan Koul**. The judgment of the Supreme Court in **Khub Chand** (supra) also does not deal with the aforesaid issue. **Khub Chand** judgment is only an authority on the proposition that the modes of publication provided under Section 4(1) of the Act are mandatory in nature. Otherwise also, the judgment in the case of **J. Sivaprakasam** is later in point of time and shall hold the field.

14. In view of the clear law laid down by the Hon'ble Supreme Court, there is hardly any need to invite reference to the Division Bench judgment of this Court rendered in the case of **Farooq Ahmad Band** (supra) which was strongly relied upon by Mr. Lone. In the aforesaid case, the Division Bench of this Court did refer to the judgment of the Hon'ble Supreme Court in case of **J. Sivaprakasam** but did rely on the same for no obvious reasons. The Court distinguished the aforesaid judgment, by holding that in the case of **J. Sivaprakasam**, the preliminary notification was published in two daily newspapers whereas in the case before the Division Bench, the notification was published only in one newspaper.

15. Viewed from any angle, we are of the considered opinion that the appellant who had proper notice of the preliminary notification issued by respondent no. 4 and had objected to the proposal of acquisition by filing his objections has suffered no prejudice by failure of the Collector to publish the notification, in a Daily newspaper in the regional language. One of the objectives of notifying the proposal of acquisition under Section 4(1) of the Act i.e. to allow the interested person to object to the acquisition, already stood achieved.

16. So far as Issue no. 4 is concerned, the writ court has very aptly dealt with the same. The choice of land to be acquired and its suitability to meet the needs of Indenting Department cannot be dictated by the interested person nor the same can be made subject matter of determination in the proceedings under Article 226 of the Constitution of India. That apart, in terms of Section (5)(A) of the Act, the appellant being an interested person is entitled to raise objections to the proposal for acquisition of the subject land. As a matter of fact, the appellant has already filed his objections opposing the proposal for acquisition of the subject land which objections are required to be considered and decided by the Collector in accordance with law. Interestingly, the appellant without waiting for the adjudication of his objections to the proposed acquisition, approached this Court and got the entire proceedings stayed. For this reason also, we find no substance in the argument of Mr. Lone that in the face of availability of sufficient land in the vicinity of University, no public purpose would be served by acquiring the subject land where there is already a school imparting education to the children in existence. This aspect, as is claimed, has already been highlighted by the appellant in his objections and we are sure that the same would be addressed by the Collector concerned on its merit.

17. No other point was urged.

18. For the foregoing reasons, we find no merit in this appeal. The same is, accordingly, dismissed. The respondent no. 4 shall proceed to acquire the subject land in accordance with law.

(VINOD CHATTERJI KOUL)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar,
09.05.2025
Yasmeen, Secy.

Whether judgment is reportable: Yes

