

Sr. No. 09

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 12.03.2025
Pronounced on: __03.2025

Case: WP(C) No. 1361/2023

1. Rattan Chand, age 75 years S/o Late Sh. Anant Ram ...Petitioner(s)/Appellant(s)
2. Sarwan Kumar, age 65 years,
3. Arjun Singh, age 60 years
4. Kimat Lal, age 55 years Sons of Late Sh. Gian Chand,
5. Ramesh Kumar, age 58 years
6. Jaswant Singh, age 50 years,
7. Roop Singh, age 53 years, Sons of Late Sh. Raj Singh,
All residents of Village Abdal (Nai Basti), Tehsil Suchetgarh, District Jammu.

Through: Mr. S.M Chowdhary, Advocate

V/s

1. The Union Territory of J&K ... Respondent(s)
Through Principal Secretary,
Department of Revenue, Civil Secretariat, Jammu.
2. The Director, Department of Tourism, Residency Road, Jammu.

3. The Divisional Commissioner,
Jammu.
4. The District Collector,
(Deputy Commissioner), Jammu.
5. The Collector Land Acquisition,
(Sub-Divisional Magistrate), Ranbir
Singh Pura, District Jammu.
6. The Tehsildar Suchetgarh, District
Jammu

Through: Ms. Sagira Jaffar, assisting counsel to
Ms. Monika Kohli, Sr.AAG

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

01. The petitioners through the medium of present petition have challenged the final award bearing No. SDMR/LA/Amuse-Park/2019-20/325-26 dated 24.04.2019 passed by the Collector Land Acquisition, R.S Pura, Jammu (respondent No. 5) by virtue of which land measuring 134 kanals and 11 marlas falling under khasra Nos. 11, 13, 14, 15, 17, 19, 20 and 21 situated at Village Abdal (Nai Basti) Tehsil Suchetgarh, District Jammu has been acquired for construction of Amusement Park.

02. According to the petitioners, they and before them their predecessors in interest have been in uninterrupted peaceful cultivating possession/occupation of the aforesaid land for the last more than 70 years, and, this fact is recorded in the revenue record. It has been contended that respondent No. 5 has, without following the mandatory procedure as laid down in Jammu and Kashmir Land Acquisition Act, 1990 Svt., {hereinafter to be referred as "State Land Acquisition Act"}

acquired the land in question without hearing the petitioners. It has been submitted that pursuant to indent dated 21.09.2016 placed by Director Tourism, Jammu for acquisition of the land in question for the purpose of construction of Amusement Park, respondent No. 5 issued notification bearing No. SDMR/LA/Amusement-Park/2016-17/253-57 dated 15.12.2016 in terms of Section 4(1) of the State Land Acquisition Act inviting objections with regard to acquisition of the land in question. According to the petitioners, neither notification under Section 4(1) of the State Land Acquisition Act nor notifications under Sections 5 and 5-A as also under Sections 9 and 9-A of the State Land Acquisition were served upon the petitioners. It has also been claimed that even notification bearing No. 338-Rev. (LAJ) of 2017-dated 16.08.2017, under Sections 6 and 7 of the State Land Acquisition Act has not been published in the Government Gazette.

03. According to the petitioners, the impugned award dated 24.04.2019 came to be passed by respondent No. 5 in ex-parte without hearing the petitioners despite the fact that the petitioners were the interested persons likely to be affected by the acquisition process. In short, the grievance of the petitioners is that the respondents have not adhered to the mandatory procedure for service of notifications under Sections 4(1), 5, 5-A, 6, 9 and 9-A of the State Land Acquisition Act. On this ground, it is being contended that the impugned award and the acquisition proceedings in respect of the land in question are liable to be quashed.

04. Respondent No. 5-Collector has filed his reply to the writ petition in which it has been contended that the petitioners, as per the revenue record, are tenants of the land in question. It has been submitted that the land in question is not in physical possession of the petitioners. It has also been contended that possession of the land

in question has been taken over by the respondents and construction work of the park has been completed. It has been further contended that the owner of the land J&K Dharmarth Trust Council has claimed that it is the owner in possession of the land in question and sought release of the compensation in its favour and has also sought a direction that amount of compensation be not released in favour of any other person. It has been submitted that on account of this dispute the compensation amount has not been transferred in the account of respondent No. 5 as a result of which, the said respondent is not in a position to disburse the said compensation in favour of the beneficiaries.

05. The respondents have contended that the impugned award has been passed after following the due procedure prescribed under the provisions of the State Land Acquisition Act. It has been claimed that there is a dispute between J&K Dharmarth Trust Council and the petitioners/tenants as both the parties are making their separate claims over the land in question. To lend support to the contention that procedure prescribed under the State Land Acquisition Act, has been followed, respondent No. 5-Collector has produced the relevant record.

06. I have heard learned counsel for the parties and perused record of the case.

07. A perusal of the impugned award reveals that names of the petitioners are reflected under the column “**name of tenant**” in the apportionment statement annexed with the award. Thus, even as per the impugned award, the petitioners happen to be the occupants of the land in question. In the apportionment statement under the column “ownership” the name of Mandir Suchetgarh is mentioned. The petitioners have also placed on record copies of revenue extracts, which confirms

the fact that they are the occupants of the land in question. Thus it can safely be stated that the petitioners are the “interested persons” and as such, they were entitled to file objections of the notice under Section 4(1) of the State Land Acquisition Act and they had also a right of hearing in terms of Section 5-A of the State Land Acquisition Act.

08. The issue that calls for determination is as to whether the respondent-Collector before passing the impugned award has followed the mandate of provisions contained in Sections, 4, 5, 5-A, 6, 9 and 9-A of the State Land Acquisition Act. In this regard, the specific stand of the petitioners is that respondent No. 5 has not adhered to the mandate of aforesaid provisions, whereas, respondent No. 5 contends that the acquisition has taken place after adhering to the provisions of the State Land Acquisition Act.

09. Before determining the merits of the rival contentions, it would apt to refer to the relevant provisions of the State Land Acquisition Act. The same are reproduced as under:

“4. Publication of preliminary notification and powers of officers thereupon — (1) Whenever land in any locality is needed or is likely to be needed for any public purpose the Collector shall notify it—

(a) through a public notice to be affixed at convenient places in the said locality and shall also cause it to be known by beat of drum and through the local Panchayats and Patwaries;

(b) in the Government Gazette; and

(c) in two daily newspapers having largest circulation in the said locality of which at least one shall be in the regional language.

5. **Payment of damage.**—The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the Provincial Revenue authority within thirty days of its being pronounced, whereupon the decision of that officer shall be final.

5-A. Hearing of objections.— Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose may, within fifteen days [after such land is notified in the manner prescribed in clause (a) of sub-section (1) of section 4 as being needed or likely to be needed for a public purpose, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person 1[or by pleader or by a person authorised by him] and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Government on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

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 authorised 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 or some fund controlled or managed by a local authority.

(2) The declaration shall be published in official Gazette, and shall state 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.

9. Notice to Persons Interested. —*(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that the claims to compensation for all interests in such land may be made to him.*

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent, before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections (if any) to the measurements made under section 8. The Collector may in any case, require such statements to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for

persons so interested, as reside, or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered in accordance with the Postal Rules in force for the time being in that behalf.”

10. From a perusal of provisions contained in Section 4 quoted above, it is clear that whenever land in a particular locality is needed for any public purpose, the Collector has to issue a public notice in the manner as provided under Clauses (a), (b) and (c) of the said provision. In terms of Clause (a), notice has to be affixed at a convenient place in the relevant locality and beat of drums has to be undertaken so as to make it known to the interested persons. Besides this, notice is also to be served through local Panchayats and Patwaries. As per Clause (b), it has also to be published in the Government Gazette and in terms of Clause (c) notice has to be published in two daily newspapers having wide circulation in the locality and one of these daily newspapers has to be in regional language.

11. The Supreme Court has, in the case of “**J&K Housing Board & Anr. Vs Kunwar Sanjay Krishan Kaul & ors.**” (2011) 4 SCC 714 Vol. 10 SCC 714 held that the manner of publication of notification under Section 4 of the State Act is mandatory. While holding so the Supreme Court observed that the object of publication in terms of Sub-Section 4(1)(c) of the Act is to intimate the people who are likely to be affected by the notification. While holding so the Supreme Court relied upon ratio laid down by it in the case of “**Khub Chand vs State of**

Rajasthan” AIR 1967 SC 1074: (1967) 1 SCR 120, wherein the said Court has observed as under:

“7. This argument was not accepted by the High Court, and in our view rightly. The provisions of a statute conferring power on the Government to compulsorily acquire lands shall be strictly construed. Section 4 in clear terms says that the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. The provision is mandatory in terms. Doubtless, under certain circumstances, the expression "shall" is construed as "may". The term "shall" in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations. The object underlying the said direction in Section 4 is obvious. Under sub-section (2) of Section 4 of the Act, after such a notice was given, the officer authorised by the Government in that behalf could enter the land and interfere with the possession of the owner in the manner prescribed thereunder. The legislature thought that it was absolutely necessary that before such officer can enter the land of another, the owner thereof should have a clear notice of the intended entry. The fact that the owner may have notice of the particulars of the intended acquisition under Section 5(2) does not serve the purpose of Section 4, for such a notice shall be given after the appropriate officer or officers enter the land and submit the

particulars mentioned in Section 4. The objects of the two sections are different: the object of one section is to give intimation to the person whose land is sought to be acquired, of the intention of the officer to enter his land before he does so and that of the other is to enable him to know the particulars of the land which is sought to be acquired. In the Land Acquisition Act, 1894 (Central Act 1 of 1894) there is no section corresponding to Section 5(2) of the Act. Indeed sub-section (2) of Section 5 of the Act was omitted by Act 15 of 1960 and Section 5-A was suitably amended to bring the said provision in conformity with those of Central Act 1 of 1894. Whatever may be said on the question of construction after the said amendment -- on which we do not express any opinion -- before the amendment, Sections 4 and 5(2) were intended to serve different purposes.

8. *Indeed, the wording of Section 4(2) of the Act leads to the same conclusion. It says, "thereupon it shall be lawful for any officer, generally or specially authorised by the Government in this behalf, and for his servants and workmen to enter upon and survey and take levels of any land in such locality...." The expressions "thereupon" and "shall be lawful" indicate that unless such a public notice is given, the officer or his servants cannot enter the land. It is a necessary condition for the exercise of the power of entry. The non-compliance with the said condition makes the entry of the officer or his servants unlawful. On the express terms of sub-section (2), the officer or his servants can enter the land to be acquired only if that condition is complied with. If it is not complied with, he or his servants cannot exercise the power of entry under Section 4(2), with the result that if the expression "shall" is construed as "may", the object of the sub-section itself will be defeated. The statutory intention is, therefore clear, namely, that the giving of*

public notice is mandatory. If so, the notification issued under Section 4 without complying with the said mandatory direction would be void and the land acquisition proceedings taken pursuant thereto would be equally void."

12. Similar views have been expressed by three Division Benches of this Court in the cases of ***"Bansi Lal Bhat vs State of J&K &ors."*** (2012) 4 JKJ 272, ***"Mussafar Ahmed Beg &ors. vs State of J&K &ors"*** (2021) 6 JKJ 20 and ***"Bashir Ahmed Bhat vs State &ors"*** (2023) 2 JKJ 310.

13. From the foregoing analysis of law on the subject, it is clear that publication of notification issued under Section 4 of the State Act in the manner prescribed therein is compulsory and the publication of the notice has to be undertaken by all the three modes as referred to in the said provision.

14. Similarly, as per Section 5-A of the State Land Acquisition Act, Collector has to afford an opportunity of being heard to the interested persons either in person or by pleader or by an authorised person of an objector. The Supreme Court has, in the case of ***"Union of India vs Shivraj"*** (2014) 6 SCC 564 held that right given under Section 5-A to land owners/interested persons to be heard on their objections is not a mere formality. It has been held that the Collector is duty bound to objectively consider the arguments advanced by the objector and make recommendations duly supported by brief reasons as to why a particular piece of land should or should not be acquired and whether the plea put forward by the objector merits acceptance. Division Bench of this Court in ***Bansi Lal Bhat's*** case (supra) has held that grant of opportunity of hearing in respect of objections filed by interested persons under Section 5-A of the State Act is mandatory.

15. Section 6 of the State Land Acquisition Act, as quoted hereinbefore, provides that declaration has to be published in official Gazette. Similarly, Section 9 of the State Act mandates the Collector to serve notice on the occupier of the land in question as also on all such persons known or believed to be interested therein. Division Bench of this Court in *Muzzafar Ahmed Beg's* case (supra) has held that non-publication of declaration issued under Section 6 of the Act in the official Gazette vitiates the proceedings for acquisition.

16. With aforesaid legal position in mind, let us now advert to the facts of the present case. If we have a look at the record produced by the respondents, the notification issued by respondent No. 5-Collector under Section 4(1) of the State Land Acquisition Act has been issued on 15.12.2017. The record further shows that its copies have been endorsed *inter-alia* to Joint Director Information with the request to publication of this notification in local newspaper. Another copy has been endorsed to General Manager, Ranbir Government Press, Jammu for publication in Government Gazette and third copy has been endorsed to Tehsildar Suchetgarh with the instructions that notice be served to concerned persons through Patwari Halqa and a copy be pasted at conspicuous place to give wide publicity through concerned Panchayats and beat of drums.

17. The record tends to show that notification under Section 4(1) of the State Act has been published in the English Daily Newspaper (Excelsior) dated December 22, 2016. The Newspaper cutting in this regard is on record of the file. However, there is nothing in the record to show that the notification has been published in any newspaper in the regional language. Besides this, the record does not reflect that the said notification has been published in the Government Gazette

or that the same has been affixed at convenient place or that the same has been made known to the interested persons of the locality by beating of drums or through local Panchayats and Patwari. There is no report of the concerned Patwari or local Panchayat on record of the file to this effect. As already stated, the procedure prescribed for publication of notice under Section 4 of the State land Acquisition Act as contained in the said provision is mandatory and all the modes for publication mentioned therein are to be followed. But, in the instant case the record does not suggest that excepting publication of the notice in one newspaper of English language, the other modes of publication have been followed by the respondent-Collector. On this ground alone, the acquisition proceedings are liable to be quashed.

18. The claim of the petitioners that they never knew about the acquisition proceedings get strengthened from the fact that the record does not contain any objections from them. Thus, there was no question of consideration of their objections by the Collector in terms of Section 5-A of the State Act. Obviously, their right of hearing has been breached in the instant case.

19. The record produced by the respondents does not show that declaration issued by the government in terms of Section 6 of the Act has been published in the Government Gazette. The Copy of the Government Gazette is not available in the record produced by the respondents. Similarly, the record does not bear testimony to the fact that any notice under Section 9 of the State Act has been served upon the petitioners, who being recorded as occupiers of the land in question are definitely interested persons.

20. It appears from the record that Dharmarth Trust Council submitted a communication dated 03.02.2017 before the Collector stating therein that it has no objection if the land in question is acquired and the land compensation is given to the Dharmarth Trust. It appears that respondent No. 5 has remained satisfied with the said communication of the Dharmarth Trust and did not take steps to serve the requisite notices under various provisions of the State Land Acquisition Act upon the petitioners, who are admittedly tenants/occupiers of the land in question. Thus, mandatory provisions of the State Land Acquisition Act have been observed by the Collector in breach thereby, vitiating the acquisition proceedings including the impugned award.

21. For the foregoing reasons, the writ petition is allowed and the impugned award passed by the respondents is quashed and the respondents are directed to initiate fresh proceedings for acquisition of the land in question under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 forthwith and conclude the same within six months from the date of this judgment. In case the land in question is not required by the respondents they shall handover the possession of the same to the recorded occupiers, forthwith.

22. *Disposed of*, accordingly.

(SANJAY DHAR)
JUDGE

Jammu
25.03.2025
AKHILESH