

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

CM(M) No. 154/2023

Reserved on: 02.12.2025
Pronounced on: 04.12.2025
Uploaded on: 04.12.2025
Whether the operative part or full
judgment is pronounced: "FULL"

Inhabitants of village Prichoo

Pulwama

1. **Abdul Khaliq Nengroo Age 60 years**
S/o Abdul Karim Nengroo
2. **Muzaffar Khalid Nengroo Age 45 Yrs.**
S/o Abdul Karim Nengroo
3. **Abdul Hamid Nengroo Age 60 years**
S/o Abdul Razak Nengroo
4. **Nazir Ahmad Nengroo Age 58 years**
S/o Abdul Razak Nengroo
5. **Mst Jana Age 70 years**
D /O Abdul Razak Nengroo
6. **Gh Mohammad Nengroo Age 70 years**
S/O Ab Gani Nengroo
7. **Ghulam Nabi Nengroo Age 69 years**
S/O Ab Gani Nengroo
8. **Gh Ahmad Nengroo Age 65 years**
S/o Abdul Karim Nengroo
9. **Mst Ameena Age 67 years**
D/o Gh Mohammad Nengroo
10. **Bashir Ahmad Nengroo age 62 years**
S/o Abdul Gani Nengroo
11. **Abdul Ahad Bhat Age 70 years**
S/O Lassi Bhat
12. **Fayaz Ahmad Nengroo Age 40 years**
S/o Abdul Sattar Nengroo
13. **Mohd Ayoub Nengroo Age 50 years**
S/o Abdul Sattar Nengroo
14. **Muzammil Ahmad Nengroo Age 45**
S/o Abdul Sattar Nengroo
15. **Gulshana Akhter age 48 years**
D /o Abdul Sattar Nengroo
16. **Nisar Ahmad Nengroo 45 Years**
S/o Gh Ahmad Nengroo
17. **Gulzar Ahmad Nengroo 40 Years**

- S/o Gh Ahmad Nengroo**
18. Mohd Ayoub Nengroo 43 Years
S/O Ab Rashid Nengroo
19. Haroon Rashid Nengroo 42 Years
S/O Ab Rashid Nengroo

All Residents of Prichoo Pulwama Tehsil and District Pulwama ...Petitioner(s)/Appellant(s)

Through: Mr. Malik Mushtaq, Adv. with Mr. Younis Ahad, Adv.

Vs.

- 1. Collector Land Acquisition Pulwama.**
2. Hon'ble High Court of JK and Ladakh at Srinagar through Registrar General ...Respondent(s)

Through: Ms. Nowhabar Khan, AC vice Mr. Mohsin Qadiri, Sr. AAG for 1
Mr. Areeb Javed Kawoosa, Adv. vice Mr. Shah Aamir, Adv. for 2

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

J U D G M E N T

Per Sanjeev Kumar, J

1. Through the medium of this petition filed purportedly under Article 227 of the Constitution of India, the petitioners seek to invoke the power of superintendence of this court to set aside an order dated 17th June 2023 passed by the court of learned Principal District Judge, Pulwama ["Reference Court"] in a land acquisition reference titled Inhabitants of Village Prichoo Pulwama vs. Collector Land Acquisition Pulwama & Anr. whereby the Reference Court has found the reference made by the Collector Land Acquisition, Pulwama incompetent and has, accordingly, dismissed it.

2. Before we advert to the grounds of challenge urged by learned counsel for the petitioners, we deem it appropriate to give few facts which are germane to the disposal of this petition.

3. On an indent placed by the Principal District Judge, Pulwama, process for acquisition of land measuring 35 Kanals, 8 marlas and 4 Sirsai situate at Prichoo Pulwama [“subject land”] for construction of New Court Complex, Pulwama was initiated by the Collector Land Acquisition, Pulwama by issuing a notification under Section 4 of the J & K Land Acquisition Act 1990[“the Act”]. On completion of requisite formalities, the Collector issued a tentative award on 19th August 2013 determining the compensation @ Rs. 10.00 lakhs per Kanal plus 15% Jabrana. On the basis of this tentative award, 80% of the compensation was disbursed to the interested persons, i.e., the petitioners herein. Although the final ward was yet to be passed, yet the petitioners feeling aggrieved by the fixation of compensation @ Rs. 10.00 lakhs per Kanal plus 15% Jabrana, moved a joint application/objection before the Collector Land Acquisition Pulwama on 5th March 2014 after receiving the compensation amount under protest.

4. While the application/objections of the petitioners were pending consideration of the Collector, the tentative compensation assessed by the Collector Land Acquisition, Pulwama was approved by the Government on 18th January 2014. This led to the passing of the final award on 2nd July 2014 by the Collector Land Acquisition. Admittedly, the petitioners did not raise any objection or sought any reference against the final award dated 2nd July 2014 passed by respondent No. 1. It seems that on their persuasion and after about six months, the Collector Land Acquisition concerned forwarded the earlier application dated 5th March 2014 to the Reference Court as a

reference. The reference remained pending before the Reference Court from 22nd August 2014 till 17th June 2023.

5. The issues were framed in the matter and even some evidence also stood recorded. It is only on 17th June 2023, the Reference Court considered the matter at length and found that the reference made by the Collector Land Acquisition was not maintainable for the reason that no petition for making reference had been filed by the petitioners before the Collector after passing the final award and receiving the amount of final award without any protest. It is this order of the Reference Court dated 17th June 2023 which is called in question in these proceedings.

6. Having heard learned counsel for the parties and perused the material on record, the legal position on the point as adumbrated by the Reference Court is correct and unexceptionable.

7. Section 18 of the Act deals with the reference and it reads as under:-

18. Reference to Court

(1) Any person interested who has not accepted the award may, by written application to the Collector require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,

(a) if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of the Collectors award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, subsection (2), or within six months from the date of the Collectors award, whichever period shall first expire.”

8. From plain reading of Section 18, it would clearly transpire that an interested person, who has not accepted the award, may file a written application to the Collector requiring him to refer the matter to the District Court for determination of his objection, be it the measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. Sub-section 2 of Section 18 provides for period of limitation for seeking reference. If the interested person seeking reference was present or represented before the Collector at the time he made his award, the application shall be moved before the Collector within six weeks from the date of award, and in other cases within six weeks of receipt of notice from the Collector under Section 12(2) or within six months from the date of Collector's award whichever period shall first expire. The terms "award" used in Section 18 is referable to the term used in Section 11 (4) of the Act.

9. A careful reading of Section 11 which deals with the inquiry and passing of award by the Collector would make it abundantly clear that the award against which a reference can be sought by the interested person is a final award, that is, one made by the Collector under Section 11 (4) of the Act.

10. Admittedly, in the instant case, the final award determining compensation payable to the interested person was passed by the Collector on 2nd July 2014 which was neither objected to nor contested by the petitioners before the Collector by filing any formal application for seeking reference to the District Judge having the jurisdiction. The application which was forwarded by the Collector to the Reference Court was made by the

petitioners on 5th March 2014, when admittedly there was no award of compensation under the Act passed by the Collector Land Acquisition.

11. Viewed thus, the application dated 5th March 2014 could not have been treated by the Collector as a request for referring the matter to the Reference Court under Section 18 of the Act. To the aforesaid extent we do not find any error of law or fact committed by the Reference Court. The Reference Court framed a specific issue in this regard and determined the same strictly as per the provisions of the Land Acquisition Act, in particular, Section 18 thereof. The trial court also placed reliance upon a judgment of this court passed in *Ashok Kumar vs. Union of India, 2000 KLJ 332*, wherein it has been held that it is a statutory duty of the Collector to satisfy himself about the conditions laid down in Section 18 of the Act before making reference before the court. It is also settled that jurisdiction of the court to hear the reference depends upon the validity of the reference.

12. Similarly, in a case reported in *1966 KLJ 328(DB)*, this court has held that the *sine qua non* of making a reference by the Collector under Section 18, is that the application for seeking such reference must be in accordance with the provisions of Section 18 and within the period of limitation specified in proviso to that section. If those provisions are not complied with, there cannot be any valid application at all, and necessarily if such an application does not exist, there could be no reference in existence in law either.

13. It is on the aforesaid premise, the Reference Court has found the reference incompetent and invalid. As we have held above, the view taken by the Reference Court reflects a correct position of law and is, therefore,

unexceptionable. However the issue involved in these proceedings needs to be viewed slightly from a different angle.

14. In the case on hand, an indent was placed by PDJ Pulwama on 1st August 2011 for acquisition of subject land and, accordingly, the Collector Land Acquisition, Pulwama issued a notification under Section 4(1) of the Act. Initially, the efforts were made to settle the rates of compensation in the District Private Negotiation Committee meeting, but due to absence of consensus between the Collector and the land owners, the negotiations could not be taken to any logical conclusion. Accordingly, the matter was processed by the Collector for compulsory mode of acquisition under the Act. The notification issued under Section 4(1) was followed by the issuance of notifications under Section 6 and 7 of the Act.

15. After completing the requisite formalities envisaged under the Act, the Collector vide his No. DCP/LA/2013-455-460 dated 19th August 2013 passed a tentative award determining the payment of compensation @ Rs. 10.00 lakhs per Kanal plus 15% Jabrana. The matter was submitted to the Government through Divisional Commissioner Kashmir for approval of the rates tentatively assessed, so that, a final award is made. The approval was received by the Collector from the Government through Divisional Commissioner Kashmir vide his communication dated 26th February 2014 and, accordingly, a final award was issued by the Collector on 2nd July 2014, assessing the compensation @ Rs. 10.00 lakhs per Kanal plus 15% Jabrana.

16. It is true that if the interested person like the petitioners who were not happy and satisfied with the assessment of compensation @ Rs. 10.00 lakhs per Kanal plus 15% Jabrana, they were to make an application to the

Collector Land Acquisition objecting to the fixation of the rates and seek reference in terms of Section 18 of the Act. This has, admittedly, not been done by the petitioners. However, we cannot ignore the fact that when the Collector Land Acquisition issued tentative award on 19th August 2013 assessing the same rate of compensation and made payment to the petitioners to the extent of 80% of the compensation assessed, the petitioners objected and made an application/objections to the Collector conveying their unacceptance of the rate of compensation assessed by the Collector Land Acquisition.

17. Here if we look to the provisions of the Act, in particular, Section 11, we do not find any provision requiring the Collector to pass a tentative award. As a matter of fact, the term “tentative award” is completely foreign to the Land Acquisition Act. What Section 11 provides is tentative assessment of compensation in a case the tentatively assessed compensation exceeds the amount specified by the Government by a notification.

18. In such eventuality, the Collector is under an obligation to refer the record of the case along with the statement of tentative assessment of compensation for approval of the Revenue Minister or an officer specially empowered by him in this behalf. It seems that this tentative assessment of compensation by the Collector which is subject to approval by the Revenue Minister or an officer specially empowered by him in this behalf is given the nomenclature of tentative award. It is here, the petitioners have been made to believe that an award has been passed by the Collector determining compensation at a rate lower than what was expected by them. They received 80% of the compensation under protest and made an application to the Collector for seeking reference.

19. While this application was pending consideration of the Collector, the rates proposed by the Collector came to be approved by the competent authority and the final award made by the Collector accordingly on 2nd July 2014. Ordinarily, as is rightly held by the Reference Court, the petitioners should have moved the fresh application objecting to the rates and seeking reference in terms of Section 18 of the Act. They did not do so for a reason, i.e., their application objecting to the same rate determined in terms of the tentative award was already pending with the Collector. They persuaded the Collector to treat that application as a request for reference against the rates fixed by the Government and make a reference to the District Court concerned in terms of Section 18 of the Act. The Collector obliged and made a reference to the Collector Land Acquisition to the District Court concerned.

20. In the given facts and circumstances of the case which we have narrated above, we are of the considered opinion that the application which was moved by the petitioners before the Collector on 5th March 2014 ruing the rates fixed by the Collector in the tentative award passed on 19th August 2013 and which application was pending disposal before the Collector when he made the final award determining/fixing the same rate of compensation is to be treated as an application made by the petitioners post passing of the final award. The Collector has probably looked at the issue from this point of view. He treated the application dated 5th March 2014, which was essentially an application made by the petitioners when the tentative award was passed, as an application valid for seeking reference against the final award passed on 2nd July 2014. Moreso, when there was no variation of rate

of compensation approved by competent authority and reflected in final award.

21. Viewed from this angle, we feel that shorn of technicalities, the reference made by the Collector should be treated as valid reference. The application moved by the petitioners before the Collector for seeking reference in terms of Section 18 which was pending consideration of the Collector when he made the final award, must be treated as an application for reference against the rates fixed by way of final award. This is more so, because the rate of compensation fixed by the Collector while passing so-called tentative award did not change in the final award made by the Collector after seeking the approval of the rates from the competent authority.

22. For all these reasons, we are inclined to set aside the order passed by the Reference Court and remit the reference back to the Reference Court for its determination on its merits.

23. Ordered accordingly.

24. The petition is, disposed of, accordingly.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

04.12.2025

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Whether approved for reporting? Yes