

Sr. No. 17
Regular

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

WP(C) No. 174/2021

Shabir Ahmad Yattoo.

...Appellant(s)/Petitioner(s)

Through: Mr. Javid Ahmad Parray, Advocate.

Vs.

UT of J&K and Ors.

...Respondent(s)

Through: Mr. M.A. Chashoo, AAG.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE.

ORDER

30.06.2022

1. Heard Sh. Javid Ahmad Parray, learned counsel appearing for the petitioner and Sh. M.A. Chashoo, learned AAG, appearing for the respondents.
2. The grievance of the petitioner in the present writ petition is regarding 9.053 Marlas of land falling under survey No. 550 of Moza Sultanpora Sumbal, Bandipora, District Baramulla.
3. The petitioner alleges that he is the owner of the said land and that sometime in the year 2017, the R&B Department took possession of the said land for construction of the long Steel Girder Bridge at Zalpora Sultanpora Sumbal, Bandipora but without acquiring the said land in accordance with any statutory provision or with the consent of the petitioner. The petitioner has not been paid any compensation of the said land ever since then.
4. The respondents 2, 3 and 4 have filed reply to the writ petition and they accept that for the purposes of construction of the above Steel Girder Bridge, the possession of the land of the petitioner aforesaid was taken over. The representation of the petitioner for grant of compensation is under

consideration and the respondents propose to pay compensation as per the stamp duty rate.

5. The aforesaid facts and circumstances clearly reveal that the private land of the petitioner has been taken over by the respondents forcibly without the consent of the petitioner and without taking recourse to any procedure prescribed in law. It is also an admitted fact that the petitioner has not been paid any compensation in respect of the said land though the determination/assessment of the compensation is under way as per the stamp duty rate.

6. It is well recognized that Right to Property is a basic human right which is akin to a fundamental right as guaranteed by Article 300 A of the Constitution of India and that no one can be deprived of his property other than by following procedure prescribe in law.

7. The facts as narrated above clearly reveal that the respondents have violated the basic human right of the petitioner and has deprived him of his property without following any procedure of Law.

8. In view of the above, the respondents are liable to be penalized for violating the basic human right of the petitioner and at the same time to pay compensation of the said land at the stamp duty rate prevalent today as well as the rental compensation for its use and occupation from the year 2017 till date.

9. Accordingly, the respondents are directed to assess and determine the compensation of the aforesaid land payable to the petitioner at the stamp duty rate as prevalent today in the area within a period of 6 weeks and to make payment thereof within a further period of 3 months. The respondents at the same time shall also pay token rental compensation for the use and occupation of the aforesaid land from the year 2017 till 2021 i.e., 05 years @ Rs. 1.00 lac per year within 3 months from today.

10. In addition to the above, on account of violation of the right to property of the petitioner which is guaranteed by the Constitution, the respondents are directed to pay special penalty of Rs. 10.00 lacs to the petitioner within a period of three months.

11. In the event, the aforesaid amounts are not paid within the time stipulated, it will be open for the petitioner to move an application and to bring it to the notice of the Court whereupon the Court will swing into action and take appropriate coercive measures against the respondents for the realization of the aforesaid amount may be as arrears of land revenue.

12. The writ petition is, accordingly, disposed of.

(JAVED IQBAL WANI)
(JUDGE)

(PANKAJ MITHAL)
(CHIEF JUSTICE)

SRINAGAR

30.06.2022

Junaid