

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
ATJAMMU**

OWP No. 937/2023

Reserved on 24.04.2025.
Pronounced on:05.05.2025.

Amanullah Khan

.....petitioner (s)

Through :- Mr. P.N.Raina Sr. Advocate with
Mr. J. Hamal Advocate.

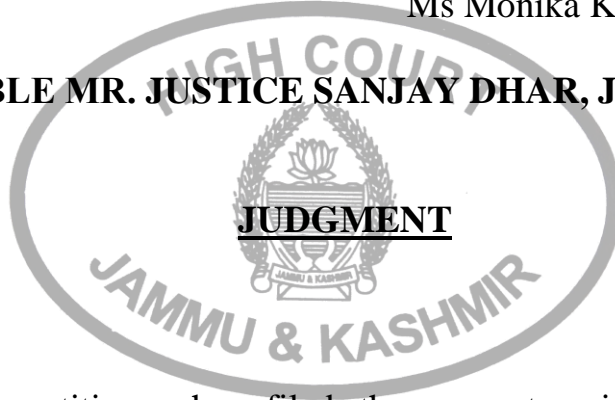
V/s

.....Respondent(s)

UOI and others

Through :- Mr. Sumant Sudan Advocate vice
Mr. Vishal Sharma DSGI
Ms Monika Kohli Sr. AAG

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



1 The petitioner has filed the present writ petition seeking a direction upon respondents No. 1 to 5 to pay due and just compensation for the loss caused to him on account of demolition and closure of his brick kiln situated at Malhori, resulting from the widening of Batote-Doda National Highway (NH-1B).

2 As per case of the petitioner, he acquired land measuring 06 kanals and 07 marlas falling under khasra No.82, situated at Malhori, on lease basis on the strength of a lease deed dated 29.08.1998 from its owner, Sh. Kiker Singh. After obtaining the requisite licence for construction of a brick kiln from the competent authority on 19.08.1999, the petitioner obtained requisite permission from the J&K State Pollution Control Board on

01.08.2000. Accordingly, the petitioner was permitted to operate brick kiln on the aforesaid land which is situated towards south on the uphill of Batote-Doda National Highway (NH-1B) at Km 37.850 near Malhori. According to the petitioner, he operated the brick kiln under the name and style of Khan Brick Kiln, Doda for about eight years till the year 2008 when the project for widening of National Highway NH-1B was undertaken by respondents No. 2 and 3. As a result of widening of the road, the brick kiln of the petitioner was badly affected, and most parts of the kiln, including the approach road, got damaged as some portion of the land on which the brick kiln was established was brought under widening of the road. This, according to the petitioner, rendered his brick kiln unworkable, as a result of which, he was constrained to shut down the brick kiln even though the licence to operate it was valid upto August, 2009. In this regard, the petitioner is stated to have approached the licensing authority vide his communication dated 07.06.2010 followed by communication dated 21.06.2010 addressed to respondent No.4 seeking cancellation of the licence. It was made clear by the petitioner to respondent No.4 that he was constrained to close down his brick kiln only because a substantial part of it had come under the widening of National Highway NH-1B at Malhori.

3 It is being submitted that the respondents did not assess and pay compensation to the petitioner for the loss sustained due to the forced closure of his brick kiln, which compelled him to approach respondent No.5, the Collector Land Acquisition, by addressing a communication dated 10.06.2008 claiming compensation for the damages. However, no action was taken by the said respondent though reports were called by the said Authority from the subordinate authorities. The application of the petitioner is stated to have

remained pending with respondent No.5, who was seized of the land acquisition proceedings under the provisions of J&K Land Compensation Act with regard to the land that had come under the widening of the road in question. On 19.09.2011, the petitioner submitted another application to respondent No.5 reminding him about his prayer regarding assessment and release of compensation for the loss caused on account of closure of the brick kiln. The said application was processed by respondent No.5 and the reports were sought from the Patwari and Naib Tehsildar concerned. The Patwari submitted his report dated 15.11.2011, which was duly considered and endorsed by the Naib Tehsildar, Khilani vide his endorsement dated 26.11.2011. The same was forwarded to respondent No.4 by the Tehsildar Doda vide his communication dated 16.01.2012. Respondent No.4, in turn, vide his communication dated 24.02.2012 sought title verification with regard to khasra Nos.82, 83, and 109. A verification report dated 24.03.2012 was prepared by the Patwari concerned which was countersigned by the Girdawar and on this basis, the Naib Tehsildar, Khilani prepared his own report dated 31.03.2012 which was forwarded to respondent No.4 by the Tehsildar, Doda vide his endorsement dated 07.04.2012.

4 Respondent No.4, the Additional Deputy Commissioner, Doda vide his communication dated 04.05.2012, called upon respondent No.3 to furnish his comments with regard to the damage caused to the brick kiln of the petitioner due to the widening of the road in question. In response thereto, respondent No.3, vide his communication dated 08.06.2012, conveyed to Deputy Commissioner, Doda that there was no evident damage to the brick kiln of the petitioner. Thereafter, the matter was taken up by respondent No.5 the Collector Land Acquisition, with respondent No.2, in terms of

communication dated 15.09.2012 and vide his communication dated 18.09.2012, respondent No.2 requested respondent No.5 to verify the facts in light of the initial joint inspection report and not to forward such claims, thereby denying any liability to pay any compensation to the petitioner.

5 Respondent No.5, with a view to settle the controversy, directed Tehsildar Doda to depute the field staff for a joint inspection of the damage of the brick kiln of the petitioner by associating respondent No.2. A joint inspection was carried out by the field staff, headed by Naib Tehsildar, Khilani in which the representative of respondent No.2 also participated. Accordingly, a report dated 31.10.2012 was submitted by Naib Tehsildar Khilani, which was endorsed by the Tehsildar Doda to respondent No.5 vide endorsement dated 01.11.2012. It has been submitted that respondent No.5 vide communication dated 30.10.2012 forwarded the requisite revenue records including Tatima Shajra, to respondent No.2 for authentication, but no action has been taken by respondent No.2 in the matter.

6 According to the petitioner, assessment of the loss caused due to the closure of his brick kiln and the damage to the brick link was conducted by M/s S.K. Industrial Technical Consultant, and a report dated 05.04.2013 was obtained from the said agency. The same was forwarded by the petitioner to respondent No.5, the Collector Land Acquisition, vide communication dated 05.04.2013. Despite all these efforts, and completion of formalities by the petitioner, the respondents have not taken any action for assessing the loss caused to the petitioner and for releasing of compensation in his favour. It has been contended that because of non-cooperation from respondent No.2, respondent No.5 has not been able to conclude the land acquisition proceedings

and work out the compensation payable to the petitioner. Hence, the present writ petition.

7 Respondents 1 to 3 have contested the writ petition by filing a reply thereto. In their reply, it has been submitted that in the year 1990, the road from Batote to Kishtwar was taken over by the Border Roads Organization from the J&K State PWD for the purpose of its upgradation. It has been submitted that the matter regarding acquisition of land for the purpose of up-gradation of the said road was taken up with the Collector, Land Acquisition, Doda and administrative approval for the same, from KM 0 to KM 45, was accorded on 29.03.2007. Compensation in the amount of Rs.425.925 lacs for the acquisition of a total 331 kanals and 15 marlas of land, which included 46 kanals and 10 marlas at Khilani, was assessed. The said compensation was deposited by respondents No. 1 to 3 with the Collector Land Acquisition, Doda, in terms of letter dated 18.07.2007. It has been further submitted that after the deposition of the amount of compensation, the work on the stretch of land, which is the subject matter of the present writ petition, was completed in the year 2012. According to respondents 1 to 3, the brick kiln of the petitioner is located along the hillside of the Batote-Kishtwar road at KM 37.100. It has been submitted that boundary wall of the brick kiln has been constructed beyond 36 feet to 46 feet from the centre of the road, and that at this particular point, the width of the land acquired is only 61 feet. It has been claimed that the brick kiln of the petitioner is situated beyond the land width of 61 feet, therefore, no part of the brick kiln was acquired, nor was it considered by the authorities for acquisition. This position was made clear to the Deputy Commissioner, Doda, when comments were sought by the said authority. It was also pointed out to the Deputy Commissioner that the entire

estimated/awarded amount has already been settled by the Collector Land Acquisition and the same has been deposited with the said office and according to respondent Nos. 2 and 3 at this belated stage, it was not possible to prove that any damage was caused to the brick kiln of the petitioner.

8 It has been contended that Tehsildar Doda and other revenue authorities have no jurisdiction or authority to assess any damage over and above the final award of Collector Land Acquisition, but these authorities have ignored the award of the Collector and issued favourable reports in favour of the petitioner with mala fide intentions. It has been claimed that the assessment made by the technical consultancy firm, which has been produced by the petitioner, is without any authority from the Collector Land Acquisition, Doda and, as such, the same cannot be considered. It has also been claimed that the petitioner is not the owner of the land that was acquired for widening of the road in question, as such, he does not have any *locus standi* to file the present writ petition. It has been submitted that the original owner of the land, Sh. Kiker Singh, has not filed any objections against the award, nor has he challenged the actions of respondent Nos. 1 to 3.

9. Respondents 1 to 3 also filed an application bearing MP No. 01/2015, seeking deletion of their names from the array of respondents. In the said application, it has been submitted that the road in question has now been handed over back to the PWD of the State Government for further development, as such, respondents 1 to 3 have no role in the road/project in question. On this ground, it is being contended that respondents 1 to 3 cannot be asked to pay any compensation to the petitioner.

10. Respondents 4 to 6 have filed their joint reply, in which it has been submitted that the petitioner had obtained certain portion of land in

village Malhori on a lease basis during the year 1998 from its original owner, where-after, he had obtained licence for operating the brick kiln from Tehsildar Doda, in terms of communication dated 19.08.1999, and the said licence was renewed up to 17.08.2009. As per this licence, the brick kiln was to be established on Batote-Kishtwar National Highway, in khasra Nos. 82, 83, and 109 of village Malhori. It has been submitted that pursuant thereto, the petitioner had constructed his brick kiln and had also constructed a path from National Highway 1B leading up to the site of the brick kiln. It has been further submitted that additional land was acquired in various villages in Tehsil Doda adjoining NH-B1 for its up-gradation, after receiving proper indent from the GREF authorities where-after the land was handed over to the indenting department viz GREF. The compensation is stated to have been assessed and disbursed to the interested persons. According to respondents 4 to 6, no indent for acquisition of land situated at village Malhori was received by the Collector, as such, the proceedings for acquisition of the land under and appurtenant to the said brick kiln could not be initiated by the Collector.

11. It has been submitted that once the application was received from the petitioner, a report from the revenue field agencies was obtained and it was found from the report that land measuring 3 kanals 16 marlas of khasra No. 82 min, 02 kanals , 07marlas of khasra No. 109 min, and 03 marlas of khasra No. 83 (total 06 kanals 06 marlas) of village Malhori had come under the widening of the road in question. It was also found that the petitioner had constructed a brick kiln on the land comprised in khasra No. 82 min, and he had also constructed accommodation for an office, a chowkidar room, and three rooms for residential purposes. It was also found that in khasra No. 83 min, the petitioner had constructed two water pools, whereas in khasra No. 109

min, the link road leading up to the brick kiln was constructed by him. It has been submitted that the aforesaid report was forwarded to respondent No.4, but instead of submitting a proper indent, the said respondent intimated that no damage was caused to the brick link due to the widening of the road.

12 Thereafter, the case of the petitioner was taken up with respondent No.2, and the Tehsildar Doda was directed to conduct a joint inspection by associating the representative of the indenting department. It has been submitted that after the joint inspection with the representatives of the GREF, it was revealed that even after decreasing the width of the road at the site in question from 88 feet to 65 feet, some area of the brick kiln had come under the widening of the said road. It was also found by the field agency that the brick kiln had become non-functional. Accordingly, the matter was again taken up with the indenting department by respondent No.5, in terms of communication dated 30.10.2012, but no proper indent has been received from the GREF authorities, as a result of which, the Collector Land Acquisition, Doda viz., respondent No.5, is unable to proceed ahead in the matter.

13 I have heard learned counsel for the parties and perused the material on record.

14 On the basis of the facts which emanate from the pleadings of the petitioner and respondents No. 4 and 6, the revenue authorities, it appears that the petitioner had established a brick kiln adjacent to the National Highway NH-B1, on the land falling under survey No. 82 at village Malhori. It also appears that he had constructed a link road from the National Highway to the site of the brick kiln and had also raised certain other structures thereon. As per the record, the brick kiln was being operated by the petitioner after

obtaining the requisite licence and clearance from the Pollution Control Board. The licence for the brick kiln was valid up to August 2009.

15 Admittedly, the land on which the brick kiln was established was taken on lease by the petitioner, and he was not the owner of the said land. While the petitioner and the revenue authorities claim that a portion of the land on which the brick kiln was established was utilized by respondents No. 1 and 2 for up-gradation of the road thereby causing damage to the brick kiln and forcing its closure, respondent 1 and 2 claim that no portion of the land on which the brick kiln was set up by the petitioner was utilized for widening of the road, and that no damage was caused to the brick kiln on account of up-gradation of the road.

16 So far as the claim of the petitioner that a portion of the land on which the brick kiln was set up by him has come under the upgraded road which has resulted in damage to the brick kiln and its consequent closure and denial of the said claim by respondents 1 and 2 is concerned, the same, it seems, has been resolved by the revenue authorities, viz respondents No. 4 to 6. A joint inspection, in which not only the petitioner but even the representatives of respondents No. 1 to 3 were associated by the concerned Tehsildar, has been conducted to ascertain the factual position. In the report dated 31.10.2012, prepared by the Naib Tehsildar concerned after conducting inspection of the site in presence of the petitioner and representatives of GREF, it has been clearly mentioned that even after reducing the width of the road at the relevant point from 82 feet to 65 feet, the land on which the brick kiln had been established has come under the road and that the GREF department has raised construction thereon. The report is accompanied by Tatima Shajra, which also depicts that a portion of the land on which the brick kiln is existing,

has come under the road. Further, vide letter dated 30.10.2012, the Collector has informed the indenting department that, after conducting the joint inspection, it has been established that the brick kiln installed by the petitioner has come under the widening of NH- B1 at village Malhori. It has also been intimated to the indenting department that the work of the kiln has been stopped for the last four years.

17. Respondents 1 to 3 dispute the findings of the joint inspection report and claim that no portion of the land on which the brick kiln was established has been utilized for up-gradation of the road and that no damage has been caused to the kiln. In this regard, it is to be noted that in terms of the provisions of the Land Revenue Act, it is the Revenue Authorities who are vested with the power to undertake demarcation of land whenever any dispute arises as to the boundaries of land in the occupation of contesting parties. In the present case, the revenue authorities have, after conducting a joint inspection in exercise of their powers under the provisions of the Land Revenue Act, found that a portion of the land which is under the brick kiln set up by the petitioner has been utilized by the respondents 1 to 3 for up-gradation of the road.

18. Respondent Nos.1 to 3 have not challenged the aforesaid report of demarcation by resorting to appropriate proceedings before the higher authorities, and instead of doing so, they have rejected it at their own level without adopting due process of law. Mere rejection of the joint inspection report by respondents No. 1 to 3 does not affect the validity of the said report. The same is binding upon respondents No.1 to 3 unless it is set aside by a competent authority. Since respondents No. 1 to 3 have not laid any challenge to the joint inspection report before the competent authority, as such, it does

not lie in their mouth to dispute its veracity. Thus, the same is binding upon both the petitioner as well as upon respondents No. 1 to 3.

19 Having held that a portion of the land on which the brick kiln was established by the petitioner has been utilized by respondents 1 to 3 for up-gradation of the road at the relevant site, the question that arises for determination is as to whether respondent No.5, the Collector Land Acquisition, after having completed the acquisition proceedings, is competent to assess the compensation for the loss caused to the petitioner on account of the closure/damage to the brick kiln. In this regard, the learned counsel for respondents 1 to 3 has contended that respondent No.5, the Collector, after rendering his award, has become *functus officio*, and it is not open to the him to pass an additional award at this stage. It has been further contended that there is no provision in the J&K Land Acquisition Act which vests powers with the Collector to pass a supplementary or additional award.

20 It is true that an award in respect of acquired land must be made before the expiry of two years commencing from the date of the declaration issued by the State under Section 6 of the Act. However, the Supreme Court, in the case of **Mohanji and another vs. State of UP and others, JT1995 (8) SC 599** has held that once an award has been made, it cannot be stated that no award could be made thereafter in respect of buildings, trees and machinery, etc. It has been further held that the land owners or interested persons would be entitled to claim compensation for these items by seeking a reference under Section 18 of the Act.

21 Relying upon the aforesaid ratio laid down by the Supreme Court, a Division Bench of this Court, in the case of **Divisional Commissioner vs. Ghulam Nabi Bhat and others, 2012 (4) JKJ(HC) 241** has held that there is

no impediment for payment of compensation by the State by publishing a supplementary award in respect of the trees, super-structure and machinery, if the same has been omitted in the original award. It has been further clarified that payment of compensation in respect of the super-structure, trees and machinery would not result into lapse of proceedings having gone beyond a period of two years.

22 In view of the aforesaid binding precedent laid down by the Division Bench of this Court, it is clear that merely because respondent No.5, the Collector, has already made an award in respect of the land which has been utilized by respondents No. 1 to 3 for up-gradation of the road in question, the said respondent does not become *functus officio*. It is open to respondent No.5 to consider the claim of the petitioner for compensation relating to the alleged damage caused to his brick kiln and the loss incurred on account of closure of the brick kiln due to up-gradation of the road in question by respondents No. 1 to 3 and to pass a supplementary award.

23 It has also been contended by respondents No. 1 to 3 that because the road has now been handed over to the State PWD, as such, they have nothing to do in the matter. The said contention of respondents No. 1 to 3 is without any substance because the road has been constructed/upgraded by them, and not by the PWD authorities. The process of acquisition in respect of the land utilized for the road up-gradation was initiated by respondents No. 1 to 3, therefore, any further proceeding, including those relating to payment of compensation to the rightful claimants, are the responsibility of respondents No. 1 to 3 and not that of the PWD. Thus, respondents No. 1 to 3 cannot absolve themselves of their liability to pay compensation to the petitioner merely by handing over the road to PWD authorities.

24 For the foregoing reasons, the writ petition is allowed. Respondent No.5, the Collector Land Acquisition is directed to initiate proceedings for assessment of the loss caused to the petitioner on account of damage to his brick kiln, and also on account of loss of business suffered by him due to the upgradation of the road by respondents No. 1 to 3. Respondents No. 1 to 3 shall render full assistance and cooperation to respondent No.5 in this regard, including deposition of compensation that may be assessed by respondent No.5, which shall thereafter be disbursed in favour of the petitioner. The entire exercise shall be completed by the respondents within a period of six months from the date a copy of this judgment is made available to them.

Jammu
05.05.2025.
Sanjeev

