State Of Jammu & Kashmir vs Sanaullah Mir on 1 April, 1980

Equivalent citations: 1980 AIR 1349, 1980 SCR (3) 281, AIR 1980 SUPREME COURT 1349, 1980 (3) SCC 272

Author: N.L. Untwalia

Bench: N.L. Untwalia, A.C. Gupta

PETITIONER:
STATE OF JAMMU & KASHMIR

Vs.

RESPONDENT:
SANAULLAH MIR

DATE OF JUDGMENT01/04/1980

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
GUPTA, A.C.

CITATION:
1980 AIR 1349 1980 SCR (3) 281
1980 SCC (3) 272

ACT:
Jammu and Kashmir State Land Acquisition Act, 1934 Section 4-Scope of.

HEADNOTE:
The respondent's forefather was the landholder of a piece of land in the State. The land was taken possession of in 1897 as the land came under a Timber depot established on land adjacent to Government land. The practice prevalent during the Maharaja's time was that only rent was remitted and no compensation was paid for the taking over the land. The respondent's ancestors had no proprietory right in the land and the right of possession was also lost on the Government dispossessing him.

Some sixty years later, the respondent filed an application before the then Prime Minister of the State for payment of compensation of the said land. Instead of deciding as to whether the State was liable to pay

compensation in respect of the land which had been taken over sixty years ago, a new land acquisition proceeding under the Jammu and Kashmir State Land Acquisition Act, 1934 was started in the year 1955 and an Award for Rs. 32,645.62 as compensation for the land was made by the Collector. On reference the District Judge increased the amount of compensation. On appeal by the State, the High Court restored the amount fixed by the Collector. The respondent's application under order 41 Rule 27 C.P.C. was dismissed by the High Court. A review petition that the land had already been acquired and that the land acquisition proceeding was without jurisdiction and a nullity was rejected. A suit was filed that the land acquisition proceedings had been taken as a result of taken of fact and law and that the entire proceeding was vitiated. The suit was dismissed. Appeal to a division Bench was also dismissed.

Allowing the appeal,

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HELD: In 1894 the Assamidar lost his assamidari right when the State p resumed the land from him. There was no law then that compensation was to be given. It depended upon the sweet-will of the Riyasat to give some other land in lieu of the land acquired. Only the land revenue was remitted, and documents indicate, compensation was also paid for the standing crops in the land. No right was left in the landholder in respect of which he could acquire a better right. Whatever right was possessed by the respondent's ancestor was dead and gone in the year 1894. [285H, 286A-B]

2. The land was resumed by the Durbar from the ancestor of the respondent before the end of the 19th century and it was recorded as 'Khalsa'. The land had become the State land in the full sense of the term and belonged to the State since then. No semblance of any right, title or interest was left in the respondent's ancestor thereafter. [286D-E]

3. A queer procedure was adopted for acquiring the land under the State Land Acquisition Act afresh, thus determining the compensation on the basis of the market value of the land prevailing 60 years later. Under the influence of

282

some high ups, a case was made out for payment of compensation to the respondent in respect of the land acquired sixty years ago by acquiring it again which led to the determination of the market value of the land in the year 1955. [286G, 287A]

4. The State Exchequer cannot be made to suffer for illegal actions of its officers. The land had been resumed long ago and belonged to the State. The whole proceeding of land acquisition was a nullity and the Award resulting therefrom was ultra vires. It mattered little whether the proceeding was taken as a result of fraud or mistake or otherwise. The respondent had not practised any fraud nor was the land acquisition proceeding started as a result of

any mistake of fact. It was either as a result of gross negligence or a deliberate act on the part of the officials at the instance of some high-ups to help the respondent. There is no question of any acquisition of the State's own land as was purported to be done in this case. [287B-D]

Government of Bombay v. Esufali Salebhai, I.L.R XXXIV Bombay, 618; Mohammad Wajeeh Mirza v. Secretary of State for India in Council, A.I.R. 1921 oudh, 31, The Deputy Collector Calicut Division v. Aiyavu Pillay and others, IX Indian Cases, 341; The Collector of Bombay v. Nusserwanji Rattanji Mistri & others [1955] 1 S.C.R. 1311 referred to.

Secy. of State v. Tayasaheb Yeshwantrao Holkar, A.I.R. 1932 Bom. 386, & Narriot v. Hamoton [1797] 2 Sm. L.C., 386 distinguished.

5. The plea taken in the appeal by filing a petition under order 41 Rule 27 or in the review matter in the High Court was beyond the scope of the appeal filed under the State Land Acquisition Act. The scope of that appeal was the determination of the amount of compensation and not to declare the whole of the land acquisition proceeding a nullity. Whatever, therefore, was said by the High Court either in appeal on the question of adverse possession or while rejecting the review petition was outside the scope of the land acquisition appeal. It could not operate as res judicata in the present suit. The observations of the High Court were without jurisdiction. Nor did any question of estoppel arise in this case because the respondent was not made to change his position by starting the land acquisition proceeding against him. He had already lost his land. He merely wanted compensation. The method adopted for the payment of compensation was wholly ultra vires and without jurisdiction. [288H, 289A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1347 of 1970. From the Judgment and Decree dated 29-4-1969 of the Jammu and Kashmir High Court in Civil Appeal No. 67 of 1965.

G.L. Sanghi, V. K. Boone and Shri Narain for the Appellant.

Gopi Nath Runzru, K. L. Taneja and S. L. Aneja for the Respondent.

The Judgment of the Court was delivered by UNTWALIA, J.,-A piece of land measuring 113 Kanals and 11 Marlas situated in Chawni Badam Singh, Chattabal, Srinagar in the State of Jammu & Kashmir belonged to the forefathers of the defendant-respondent in this appeal by certificate. Indisputably the res-

pondent's ancestor was Assamidar of the land, that is to say, he was the land holder as distinguished from land owner. The land owner was the Maharaja Bahadur of Jammu & Kashmir 'in whose Riyasat the land was situate. Proposals were made in the year 1893 to take this land from the ancestor of the respondent as it came under a timber depot established on adjacent Government land. The land was taken possession of and as was the practice prevalent during the Maharaja's time only rent was remitted and no compensation was paid for taking over the land. The respondent's ancestor had merely a right of possession and no proprietory right in the land. He lost the right of possession too on the Government dispossessing him and taking possession for the purpose of the timber depot. Sixty years later the a Respondent filed an application before the then Prime Minister of Jammu & Kashmir for payment of compensation of the land. Inquiries were made from the various officers of the various department and eventually instead of deciding as to whether the State was liable to pay any compensation in respect of the land which had been taken over 60 years ago or not the decision taken was to start a new land acquisition proceeding under the Jammu & Kashmir State Land Acquisition Act, 1934 which is at pari materia with the Central Land Acquisition Act, 1894. Notice under s. 4 of the said Act was issued in or about the year 1955 and the Collector, Srinagar made an Award determining the compensation for the land at Rs. 32,645.62 paise. The respondent asked for a reference and on reference being made the learned District Judge determined the compensation at Rs. 35,908.10 paise. The State preferred an appeal. The High Court restored the amount fixed by the Collector and knocked down the enhancement made by the District Judge. For the first time in the High Court an application was filed under order 41 Rule 27 of the Code of Civil procedures claiming adverse possession of the land and for the taking of additional evidence. The High Court repelled this contention. Later a Review Petition was filed in the High Court claiming that the land had already been acquired and the entire land acquisition proceeding was without jurisdiction and a nullity. The High Court was asked to award no compensation. The High Court rejected this Review Petition. Thereafter the present suit was filed saying that the defendant respondent had committed fraud and the land acquisition proceeding had been taken as a result of mistake of fact and law and that the entire proceeding was vitiated. The suit was filed on the original side of the High Court of Jammu & Kashmir. The learned Judge dismissed the suit. The State, the appellant in this appeal, failed in appeal before the Letters Patent Bench of the High Court. The matter has now come before us.

The findings of the learned single Judge are:-

> "(1) That the lands in dispute were in continuous possession of the forest department since 1894 A.D. (2) That no rent or compensation was paid to the defendant or his ancestor for these lands. (3) That the lands in dispute were recorded as "Khalsa Sarkar" which means that the proprietory interest vested in the Government.
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> (4) That at the time when the land acquisition proceedings were initiated, the officers concerned of the plaintiff were fully aware of the facts mentioned above. But their attention was not specifically drawn to the council resolutions. (5) That the forest records having been burnt in the year 1943 and after a fresh enquiry was initiated at the instance of the Advocate general, the council resolutions were traced in the Government repository at Jammu.

(6) That the old settlement file which contained the resolutions perhaps did not form part of the land acquisition file."

In regard to finding no. 6 there was some controversy as to whether the land acquisition file contained the old resolutions or not and whether the attention of the authorities was drawn to them. We shall assume in favour of the respondent as found by the learned Trial Judge that there was no fraud practised by him nor was there any mistake of fact on the part of the authorities concerned in starting the land acquisition proceeding.

The Appellate Bench of the High Court consisted of Mian Jalal-ud-Din J. and Anant Singh J. They differed on most of the points although agreed in their conclusion that the appeal should be dismissed. The findings of Mian Jalal-ud- Din J. are .-(1) "That it could not be said that the authorities dealing with the acquisition proceedings were ignorant about the factual aspect of the matter that the land had been resumed in the year 1893 under council resolution and that no compensation was to be paid for this, and that its character was that of "KHALSA" and it remained in possession of the forest department for over 60 years...." (2) "In our opinion the initiation of acquisition proceedings was wholly uncalled for as there was nothing to be acquired. Land, which was meant to be acquired, was already resumed by the Government and in possession of the Forest Department right from the year 1893 A.D. under the orders of the council and was shown as Khalsa ;" (3) "It appears to be a case of gross negligence on the part of the officers of the Government dealing with the acquisition matter. The plaintiff cannot avoid the decree on the ground that his officers have acted in gross negligence;" and (4) that the order of the High Court in appeal and in review operated as res-judicata. The plaintiff-appellant was also estopped from challenging the land acquisition proceeding. Mian Jalal-ud- Din J. agreed in this regard with the learned single Judge.

Anant Singh J. did not agree with the other learned Judge on the question of estoppel and res-judicata but agreed with him that negligence was no ground for setting aside the Award made in the land acquisition proceeding and concurred in the dismissal of the appeal.

Even on the findings recorded by the courts below this appeal must succeed. We shall, however, briefly refer to some facts which emerge from the council resolutions and some other documents of the years 1893 and 1894.

Ext. P.W. 5/1 is State council Resolution No. 2 dt. 7- 6-1893 by which sanction was accorded to the allotment of land with existing house situated at Purani Chawni for opening a Government Timber Depot. Eventually land in question also came under this depot. Ext. P.W. 5/2 is State Council Resolution No. 17 dated 4-9-1893 showing that from the report of the Tehsildar it appeared that the Forest Department wanted to take possession of the land in question which was a sown land by storing timber there. Council Resolution No. 10 dated 28-10-1893, Ext. PW 5/3 is very important. Now this resolution states that the land shall have to be compulsorily acquired but "as per practice in the country only the land revenue shall have to be remitted and the cultivators cannot get any compensation in cash nor can the Council sanction taking of the land on lease. Of course there is no bar to the grant of cultivated land of the same quality to the cultivators in exchange by the Government."

Next comes the Resolution No. 8 dated 17-2-1894, Ext. PW 5/4 showing "(a) The Governor should give the land required by the Conservator of Forests and the land Revenue of the land which has come under the timber depot should be remitted." Thereafter the order recorded is "The proposal of the Settlement Commissioner is accepted. The Revenue Department shall comply."

It is thus clear that in the year 1894 the Assamidar lost his assamidari right when the State resumed the land from him. There was no law prevalent then that compensation was to be compulsorily given. It depended upon the sweet-will of the Riyasat to give some other land in lieu of the land acquired. In this case also it appears only the land revenue was remitted. And probably, as documents indicate, compensation was also paid for the standing crops in the land. But what is clear to us with certainty is that no right was left in the land holder in respect of which he could acquire a better right on the basis of the report of the Glancy Commission in 1932 as has been remarked by the learned Trial Judge. Whatever right was possessed by the respondent's ancestor was dead and gone in the Year 1894.

Ext. P. W. 14/2 is Intikhab Jamabandi Mauza Chawni Badam Singh Tehsil. In the remarks column the note made runs thus:-

> "By order of Durbar No. 2381 dated 5th Assuj '55 the total area of village has been excluded from the land revenue, and the total land of this village has come under the timber depot and therefore the total land has been recorded as Khalsa. The original file has been returned to Durbar on 29th Assuj after necessary action.
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> Dated 29th Assuj '55."

The year '55 is samvat year 1955 which will roughly correspond to 1897. Thus there is no doubt that the land was resumed by the Durbar from the ancestor of the respondent before the end of the 19th century and it was recorded as 'Khalsa'. The land had become the State land in the full sense of the term and belonged to the State since then. No semblance of any right title or interest was left in the respondent's ancestor thereafter.

Yet after 60 years the matter was re-agitated by the respondent by claiming compensation in respect of the land which had been taken possession of long ago by the State. The respondent did not claim that any right title or interest was left in him. He merely wanted on compassionate grounds compensation for the land. One can under stand if on compassionate grounds some compensation with reference to the year when the land was taken possession of could be determined and paid. But that was not done. A very queer procedure was adopted of acquiring the land under the State Land Acquisition Act afresh thus determining the compensation on the basis of the market value of the land prevailing 60 years later. We have gone through the letter dated 17-12-1954 Ext. P.W. 14/A written by Tehsildar; the Patwari's Report dated 12-4-1955 Ext. D.W.4/A; the Tehsildar's Report dated 21-4-55 Ext. P.W. 19/B/2; letter dated 3-5-55 Ext. D.W.12/1 written by the Deputy Commissioner to the Commissioner; Ext. P.W. 1/2 the letter dated 2-6-1955 written by the Conservator of Forests to the Chief Conservator of Forests; the office Note dated 9-6-1955 Ext. P.W. 1/3 and Chana's letter dated 22-6- 1955, Ext. P.W. 1/5. On going through these documents it appears

to us that under the influence of some high-ups a case was made out for payment of compensation to the respondent in respect of the land acquired 60 years ago by acquiring it again which naturally led to the determination of the market value of the land in or about the year 1955. The State Exchequer cannot be made to suffer for such wanton and illegal actions of its officers. The land had been resumed long ago. It belonged to the State. The whole proceeding of land acquisition was a nullity. The Award resulting therefrom was also ultra vires and a nullity. It mattered little whether the proceeding was taken as a result of the fraud or mistake or otherwise. We are accepting the findings of the courts below that the respondent had not practised and fraud nor was the land acquisition proceeding started as a result of any mistake of fact. It was either as a result of gross negligence or a deliberate act on the part of the officials at the instance of some high-ups to help the respondent. It is well-settled that there is no question of any acquisition of the State's own land as was purported to be done in this case.

In The Government of Bombay v. Esufali Salebhai it has been observed at page 624 thus:-

> "It is quite true that there can be no such thing as the compulsory acquisition of land, owned by and in the 'occupation and control of the Crown. The Land Acquisition Act cannot apply to such lands, because all Crown lands being vested in the Government, they are competent and free to devote any of those lands to a public purpose. It is a contradiction in terms to say that the Government are compulsorily acquiring that which they have already acquired otherwise, both as to title and possession."

The same view has been taken in Mohammad Wajeeh Mirza v. Secretary of State for India in Council when at page 33 the passage from the judgment of Chandavarkar J. extracted above was quoted with approval. In the case of The Deputy Collector, Calicut Division v. Aiyavu Pillay and others Wallis J. Of the Madras High Court, in our opinion, correctly observed-"It is, in my opinion, clear that the Act does not contemplate or provide for the acquisition of any interest which already belongs to Government in land which is being acquired under the Act but only for the acquisition of such interests in the land. as do not already belong to Government." Venkatarama Ayyar J. speaking for this Court in The Collector of Bombay v. Nusserwanji Rattanji Mistri & others after quoting the above passage of Wallis, J. from the Madras decision aforesaid remarked at page 1322-"With these observations, we are in entire agreement" and added "When Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition, because there can be no question of Government acquiring what is its own"

> The Courts below have heavily relied upon the decision of the Bombay High Court in Secy. of State v. Tayasaheb Yeshwantrao Halkar. This decision, in our opinion, is clearly distinguishable. Firstly the principle in the case of Marriot v. Hamoton which was applied in the Bombay case is not applicable in the present case. In the Bombay case the money under the land acquisition Award had been paid and the suit was for its recovery back. In that situation it was held that what was paid under the compulsion of law, namely, the land acquisition Award, cannot be recovered back. In the instant case the money has not yet been paid. The suit is for the cancellation of the Award which is a nullity. The second point of distinction between the Bombay

case and the present case is that in the former though the title belonged to the Government, possession was with the other side. In the land acquisition proceeding possession was acquired on payment of compensation. In that event it was held that money paid was not under any mistake of fact or law. It was paid for divesting the defendant of his possession. In the instant case neither title nor possession was with the defendant. The entire bundle of rights in the land had vested in the State long ago and there was nothing left to be acquired. In such a situation the High Court was wrong in following the Bombay decision and in applying its ratio to the facts of this case.

We may briefly dispose of the point of estoppel and res-judicata. We approve of the view taken by Anant Singh, J. in that regard. We may also add that the plea taken in the appeal by filing a petition under order 41, Rule 27 or in the review matter in the High Court was beyond the scope of the appeal filed under the State Land Acquisition Act. The scope of that appeal was the determination of the amount of compensation and not to declare the whole of the land acquisition proceeding a nullity. Whatever, therefore, was said by the High Court either in appeal on the question of adverse possession or while rejecting the review petition was outside the scope of the land acquisition appeal. It could not operate as res-judicata in the present suit. The observations of the High Court were without jurisdiction. Nor did arise any question of estoppel in this case because the respondent was not made to change his position by starting the land acquisition proceeding against him. He had already lost his land. He merely wanted compensation. The method adopted for the payment of compensation was wholly ultra vires and without jurisdiction. That being so no question of estoppel arose in this case.

For the reasons stated above, we allow this appeal; set aside the judgments and decrees of the High Court; decree the plaintiff's suit; declare the land acquisition proceeding and the Award or the decree made thereunder as nullities. Since the defendant-respondent has been unnecessarily harassed in the suit by the wrong and illegal actions of the authorities of the State, we direct that the plaintiff-appellant will get no costs. On the other hand, the defendant-respondent will get costs of the suit and the appeals in all the three courts, namely, the Trial Judge, the Division Bench and this Court.

N.K.A. Appeal allowed.