

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

Reserved on: 18.08.2023
Pronounced on: 25.08.2023

**WP(C) No.1542/2022
c/w
WP(C) No.2055/2022**

**NASREENA RASHID BANDAY ...PETITIONER(S)
MOHAMMAD AKRAM BAHT & ORS.**

Through: - Mr. Nissar Ahmad, Adv (for petitioner in WP(C)
No.1542/2022)

Mr. J. H. Reshi, Adv. (for petitioners in WP(C)
No.2055/2022)

Vs.

**GOVT. OF J&K AND OTHERS ...RESPONDENT(S)
UT OF J&K & OTHERS**

Through: - Mr. Syed Musaib, Dy. AG with Mr. Mohammad
Younis, Adv.-for R1 to R4 (in WP(C) No.1542/2022)
and for R1 to R7 (in WP(C) No.2055/2022)

Mr. J. H. Reshi, Adv. for R5 to R8 (in WP(C)
No.1542/2022)

Mr. Nissar Ahmad, Adv. for R8 (in WP(C)
No.2055/2022)

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

JUDGMENT

1. By this common order, two writ petitions one filed by Nasreena Rashid Banday and another filed by Mohammad Akram Bhat and others are proposed to be disposed of.

2. WP(C) No.1542/2022 has been filed by petitioner Nasreena Rashid Banday contending therein that she had purchased land measuring 03 kanals 10 marlas under Khasra No.3335/2603 situated in Mouza

Awantipora Tral from respondent No.8-Javaid Ahmad Bhat by virtue of sale deed dated 28th of June, 2016, registered on 29th June 2016. It is claimed that the petitioner Nasreena Rashid Banday became owner in possession of the land in question to the exclusion of erstwhile owner of the land. However, due to certain unavoidable circumstances, entry in the revenue record could not be made in respect of the land in question in favour of petitioner Nasreena Rashid Banday.

3. It appears that the Collector, Land Acquisition, Pulwama, vide his notification dated 27th February, 2017, issued notification under Section 4 of the Jammu and Kashmir Land Acquisition Act (hereinafter referred to as “the Act”) for acquisition of land including the land covered under Survey No.3335/2603-min situated at Awantipora, Pulwama, for establishment of All India Institute of Medical Sciences. The Collector thereafter proceeded to issue notices under Section 5 and 6 of the Act and, accordingly, 463 kanals of land including the land purchased by petitioner Nasreena Rashid Banday was acquired by the official respondents. It is claimed that no compensation was paid to petitioner Nasreena Rashid Banday though possession of the land was taken over by the Collector.

4. It has been further submitted that petitioner Nasreena Rashid Banday filed an application before the Collector seeking release of compensation for the land measuring 03 kanals and 10 marlas owned by her but no action was taken by the official respondents on the said application presumably on the ground that the name of petitioner Nasreena Rashid Banday had not been incorporated in the revenue records pursuant to the sale deed. It has been contended that the entry in the revenue record is only fiscal in nature

and once the petitioner became the owner of the land, she was entitled to compensation after the said land was acquired by the official respondents.

5. It has been further submitted that petitioner Nasreena Rashid Banday had filed a civil suit against the respondents seeking compensation and damages but when she came to know that the award has been passed by the Collector, the suit was withdrawn with liberty to file appropriate proceedings and, accordingly, the instant writ petition has been filed seeking a direction upon the Collector to release the compensation in respect of the aforesaid land in favour of petitioner Nasreena Rashid Banday.

6. Initially, only official respondents were impleaded as parties to the writ petition but later on, on the basis of an application made by the private respondent Nos. 5 to 8, they were impleaded as respondents and they contested the writ petition by filing a reply thereto.

7. WP(C) 2055/2022 has been filed by Mohammad Akram Bhat and others whereby they have sought a direction upon the Collector Land Acquisition, Awantipora, to refer the matter to District Judge, Pulwama, in terms of Section 18 read with Section 31 of the Act for determination of compensation and area of the acquired land of the petitioners for which compensation is payable to them under law. A further direction has been sought upon the Collector to deposit the undisbursed amount of compensation of Rs.69,58,873/ in respect of the acquired land of the petitioners measuring 15 kanals and 13 marlas under Khasra Nos.3819/3345/2603 and 3671/335/2603 situated at Awantipora and

Rs.7,52,412/ on account of compensation in respect of trees/plants with the Court of Principal District Judge, Pulwama, along with statutory interest.

8. As per case of the petitioners Mohammad Akram Bhat and others, land measuring 15 kanals and 13 marlas under Khasra Nos.3819/3345/2603 and 3671/335/2603 along with trees standing thereon was acquired by Collector Land Acquisition, Awantipora, in terms of final award No.DCP/LA/2018/1839-44 dated 31.03.2018. It has been submitted that the possession of the land in question has been taken over by the official respondents, whereafter some of the land owners filed a writ petition OWP No.1948/2018 for redressal of their grievances. The aforesaid writ petition came to be disposed of in terms of order dated 10.08.2021, whereby the writ petitioners therein were given liberty to lodge their protest against award dated 31.03.2018 and to seek reference under Section 18 of the Act. It was further directed that if any such reference is sought, the same shall be forwarded to the Principal District Judge for adjudication on merits. It seems that pursuant to the aforesaid order, the Collector made a reference on the basis of application made by the writ petitioners of aforesaid writ petition to the Court of Principal District Judge, Pulwama.

9. It has also been claimed by petitioners Mohammad Akram Bhat and others that the Collector Land Acquisition, Awantipora, has not disbursed the amount of compensation in their favour on the ground that on 22.09.2012, an interim order has been passed by the Court of learned Sub-Judge, Pulwama, in a civil suit filed by Nasreena Rashid Banday (petitioner in WP(C) No.1542/2022). It has been submitted that the aforesaid suit was withdrawn by plaintiff Nasreena Rashid Banday on 16.07.2022 but still

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then, the Collector is not releasing the amount of compensation in favour of petitioners Mohammad Akram Bhat and others. It has been contended that the official respondents could not have taken possession of the acquired land without first paying the compensation to the land owners and, as such, their action of not disbursing the compensation to the land owners is arbitrary and contrary to law.

10. The stand of the official respondents in both the writ petitions is that essentially the dispute is between the petitioners of the two writ petitions. While petitioner Nasreena Rashid Banday claims that she has purchased the land measuring 03 kanals and 10 marlas out of the acquired land from Javaid Ahmad Bhat, who happens to be respondent No.8 in WP(C) No.1542/2022 and petitioner No.4 in WP(C) No.2055/2022, but her name was not reflected in the revenue record, as such, the Collector was not obliged to issue notice to her before finalizing the acquisition proceedings. It has been submitted that compensation in respect of the acquired land could not be released in favour of petitioners Mohammad Akram Bhat and others because there was an interim injunction operating with regard to release of the compensation in their favour and after withdrawal of the suit by petitioner Nasreena Rashid Banday, she has filed the instant writ petition.

11. Heard and considered.

12. So far as the facts emerging from the pleadings of the parties are concerned, the same are not in dispute. Land measuring 15 kanals and 13 marlas falling in Khasra Nos.3819/3345/2603 and 3671/335/2603 situated

at Village Awantipora along with certain more land stands acquired by the Collector, Land Acquisition, Awantipora, for the purpose of construction of AIIMS. It is also not in dispute that award dated 31.03.2018 stands published by the Collector and in the said award, the aforesaid land is also included. It is also admitted case of the parties that land measuring 03 kanals and 10 marlas under Survey No.3335/2603 situated at Mouza Awantipora out of the acquired land has been purchased by petitioner Nasreena Rashid Banday vide sale deed dated 28th June, 2016 from Javaid Ahmad Bhat. There is no dispute to the fact that entry in the revenue record relating to the aforesaid sale has not been made. The question that arises for consideration on the basis of the aforesaid admitted facts is as to whether the Collector was obliged to issue a notice to petitioner Nasreena Rashid Banday before finalizing the acquisition proceedings and if he was not obliged to do so, in that case what is the remedy available to the said petitioner.

13. Section 9 of the Act casts a duty upon the Collector to issue notice to the persons interested when the Government intends to take possession of the land. In the instant case, the official respondents have taken a stand that they have not issued a notice to petitioner Nasreena Rashid Banday as they were not obliged to do so because her name was not reflected in the revenue record of the land in question. As already noted, it is not in dispute that name of petitioner Nasreena Rashid Banday was not reflected in the revenue record. It is a settled law that the Collector acting as an Authority under the Land Acquisition Act is required to issue notices to the interested persons but the Collector is not required to make a roving enquiry to verify

the persons who could have interest in the land acquisition proceedings.

My aforesaid view is supported by the ratio laid down by the Supreme Court in the case of **S. Palani Velayutham and others vs. District Collector, Tirunvelveli Tamil Nadu and others**, (2009) 10 SCC 664. In the said case, the Supreme Court has, while considering this aspect of the case, observed as under:

6. The first question is whether the vested remaindermen of acquired lands were entitled to notice of acquisition, even if their names were not entered in the revenue records. The Collector (or others exercising the functions of the Collector) is required to issue, in addition to the public notice to all persons interested, individual notices to persons known or believed to be interested in the acquired land.

7. There is a significant difference between "persons known or believed to be interested" and "persons interested". A "person interested" no doubt would include all persons claiming an interest in the compensation on account of the acquisition of land, including the vested remaindermen. On the other hand, "a person known to be interested" refers to persons whose names are recorded in the revenue records, as persons having an interest in the acquired lands, as the owner, sharer, occupier or holder of any interest. They are entitled to notice.

8. There is no obligation on the part of the Collector to hold an enquiry to find out whether there are any other persons interested in the land or whether there are any vested remaindermen, in addition to those whose names are entered as the owners/holders/occupiers of the acquired land. Nor does the Collector have any obligation to issue notices to persons whose names are not entered in the revenue records. This does not mean that the persons whose names are not entered in the revenue records do not have any right in the acquired land or that they lose their claim to compensation. Their interests and rights in regard to compensation are protected by the provision relating to apportionment of compensation and provision for referring the disputes to a civil court for apportionment of compensation.

9. Persons are "believed" to be interested in the acquired land, if their names are disclosed to the Collector as

persons having an interest in the acquired land (though their names are not entered in the revenue records) either in correspondence or otherwise and whom the Collector believes as having an interest in the acquired lands. The question whether a person is believed to be interested in the acquired land, would depend upon the subjective satisfaction of the Collector.

10. The Collector is not expected to hold mini enquiries to find out whether the persons whose names are disclosed, (other than those whose names are entered in the revenue records) are persons interested in the acquired land or not. Therefore, no person has any right to assert that the Collector should recognise him to be a person interested in the acquired land, and issue notice to him, merely because someone informs the Collector that such person is also having an interest, if his name is not entered in the revenue records.

*11. Of course, if the Collector is *prima facie* satisfied from his records that someone other than those whose names are entered in the revenue records, are also interested in the land, he may at his discretion, issue notice to them. If he is not satisfied, he need not issue notice to them. Who is to be "believed to have an interest" is a purely subjective administrative decision. Such persons have no right to claim that notice of acquisition should be issued to them.*

12. Therefore we agree with the Division Bench that notice of acquisition has to be issued only to those whose names are entered or recorded as owners/holders/occupiers in the revenue records and not to others.

14. From the foregoing analysis of the law on the subject, it is clear that a Collector is not expected to make a roving enquiry and try to locate an owner who may have subsequently purchased the land from the previous owner. Failure on the part of revenue authorities to make entry in the register of mutation in favour of subsequent owner would have no effect on the acquisition proceedings. Thus, the contention of petitioner Nasreena Rashid Banday that the Collector was obliged to issue a notice to her before finalizing the acquisition proceedings cannot be accepted.

15. Mr. J. H. Reshi, learned counsel appearing for the private respondents in the petition filed by petitioner Nasreena Rashid Banday has contended that petitioner Nasreena Rashid Banday should have filed a civil suit to establish her right and seek redressal of her grievances but she has, after filing a civil suit in this regard, withdrawn the same. It is contended that now petitioner Nasreena Rashid Banday cannot urge these facts by way of a writ petition, particularly when the fact relating to possession of Nasreena Rashid Banday over the acquired land prior to its acquisition is disputed. It has been contended that pursuant to the sale deed, possession of the land in question was never delivered to petitioner Nasreena Rashid Banday and, therefore, she is not entitled to any compensation.

16. In the above context, it has to be noted that sale of some portion of acquired land by Javaid Ahmad Bhat in favour petitioner Nasreena Rashid Banday is not in dispute. For determination of entitlement of petitioner Nasreena Rashid Banday to compensation for the land purchased by her it has to be ascertained whether the title of the land in question has vested in her. The question whether possession of the land was delivered to petitioner Nasreena Rashid Banday has also to be determined in appropriate proceedings and similarly the question whether petitioner Nasreena Rashid Banday had acquired title of the land, is to be determined in appropriate proceedings. The moot point to be decided is as to what would be the appropriate forum to determine all these issues.

17. In order to find an answer to the above issue, the provisions contained in Section 18 of the Act are required to be noticed. 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 Collector's award ;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire

18. From a perusal of the aforesaid provision, it is clear that an interested person who has not accepted the award can make an application to the Collector requiring him to make reference for determination of the Court the disputes as regards 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.

19. Another provision which needs to be noticed is Section 31 of the Act. It reads as under:

31. Dispute as to apportionment.— *When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable the Collector may refer such dispute to the decision of the Court.*

20. From a perusal of the aforesaid provision, it appears that if any dispute arises as to the apportionment of the compensation settled under Section 11 of the Act as to the persons to whom the same is payable, the

Collector may refer such dispute to the decision of the Court.

21. There is a clear distinction between the provisions contained in Section 18 and 31 of the Act. While under Section 18 of the Act, reference can be made on the request of a person interested whose name figures in the award and who has not accepted the award, but so far as reference under Section 31 of the Act is concerned, the same can be made even in a case where a dispute arises as to the apportionment of the compensation settled by the Collector in terms of Section 11 of the Act and it can be made even at the instance of a person, whose name does not figure in the award if such person raises a dispute as regards the entitlement of persons to whom the compensation is payable. While under Section 18 of the Act, the Collector has to mandatorily make a reference to the Court but under Section 31 of the Act, it is the discretion of the Collector to make a reference to the Court. Another distinction between the two provisions is that limitation period with outer limit of six months is provided for a reference under Section 18 of the Act whereas no limitation period is prescribed for reference made under Section 31 of the Act.

22. The Supreme Court has, in the case of **Sharda Devi vs. State of Bihar**, (2003) 3 SCC 128, after analyzing the provisions of the Central Land Acquisition Act, summarized difference between reference under Section 18 and the one under Section 30 which is in *pari-materia* with Section 31 of the J&K Land Acquisition Act, in the following manner:

25. Keeping in view the principles laid down by this Court in Dr G.H. Grant case and analysing in depth the provisions of the Act, the difference between reference

under Section 18 and the one under Section 30 can be summarized and set out as under:

By reference to locus

*Under Section 18(1) a reference can be made by the Collector only upon an application in writing having been made by (i) any person interested, (ii) who has not accepted the award, (iii) making application in writing, to the Collector, requiring a reference by the Collector to the court, (iv) for determination of any one of the four disputes (specified in the provision), and (v) stating the grounds on which objection to the award is taken. For reference under Section 30 no application in writing is required. The prayer may be made orally or in writing or the reference may be made *suo motu* by the Collector without anyone having invited the attention of the Collector for making the reference.*

By reference to the disputes referable

Under Section 18(1) there are four types of disputes which can be referred to the civil court for determination. They are disputes : (i) as to the measurement of the land, (ii) as to the amount of the compensation, (iii) as to the persons to whom the compensation is payable, or (iv) as to the apportionment of the compensation among the persons interested. Under Section 30 the only disputes which are referable are : (i) any dispute as to the apportionment of the amount of compensation or any part thereof, or (ii) a dispute as to the persons to whom the amount of compensation or any part thereof is payable. A dispute as to the measurement of the land or as to the quantum of compensation or a dispute of a nature not falling within Section 30, can neither be referred by the Collector under Section 30 of the Act nor would the civil court acquire jurisdiction to enter into and determine the same.

By reference to the nature of power

Under Section 18 of the Act the Collector does not have power to withhold the reference. Once a written application has been made satisfying the requirements of Section 18, the Collector shall make a reference. The Collector has no discretion in the matter, whether the dispute has any merit or not is to be left for the determination of the court. Under Section 30 the Collector may refer such dispute to the decision of the court. The Collector has discretion in the matter. Looking to the nature of the dispute raised, the person who is raising the dispute, the delay in inviting the attention of the court, and so on — are such illustrative factors which may enter into the consideration of the

Collector while exercising the discretion. If the Collector makes the reference it may be decided by the court subject to its forming an opinion that the dispute was capable of reference and determination under Section 30 of the Act. In case the Collector refuses to make a reference under Section 30 of the Act, the person adversely affected by withholding of the reference or refusal to make the reference shall be at liberty to pursue such other remedy as may be available to him under the law such as filing a writ petition or a civil suit.

By reference to limitation

Under Section 18 the written application requiring the matter to be referred by the Collector for the determination of the court shall be filed within six weeks from the date of the Collector's award if the person making it was present or represented before the Collector at the time when he made his award or within six weeks of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award, whichever period shall first expire. There is no such limitation prescribed under Section 30 of the Act. The Collector may at any time, not bound by the period of limitation, exercise his power to make the reference. The expression "the person present or represented" before the Collector at the time when he made his award would include within its meaning a person who shall be deemed to be present or represented before the Collector at the time when the award is made. No one can extend the period of limitation by taking advantage of his own wrong. Though no limitation is provided for making a reference under Section 30 of the Act, needless to say, where no period of limitation for exercise of any statutory power is prescribed, the power can nevertheless be exercised only within a reasonable period; what is a reasonable period in a given case shall depend on the facts and circumstances of each case.

26. *The scheme of the Act reveals that the remedy of reference under Section 18 is intended to be available only to a "person interested". A person present either personally or through a representative or on whom a notice is served under Section 12(2) is obliged, subject to his specifying the test as to locus, to apply to the Collector within the time prescribed under Section 18(2) to make a reference to the court. The basis of title on which the reference would be sought for under Section 18 would obviously be a pre-existing title by reference to the date of the award. So is Section 29, which speaks of "persons interested". Finality to the award spoken of by Section 12(1) of the Act is between the Collector on*

one hand and the “persons interested” on the other hand and attaches to the issues relating to (i) the true area i.e. measurement of the land, (ii) the value of the land i.e. the quantum of compensation, and (iii) apportionment of the compensation among the “persons interested”. The “persons interested” would be bound by the award without regard to the fact whether they have respectively appeared before the Collector or not. The finality to the award spoken of by Section 29 is as between the “persons interested” inter se and is confined to the issue as to the correctness of the apportionment. Section 30 is not confined in its operation only to “persons interested”. It would, therefore, be available for being invoked by the “persons interested” if they were neither present nor represented in the proceedings before the Collector, nor were served with notice under Section 12(2) of the Act or when they claim on the basis of a title coming into existence post-award. The definition of “persons interested” speaks of “an interest in compensation to be made”. An interest coming into existence post-award gives rise to a claim in compensation which has already been determined. Such a person can also have recourse to Section 30. In any case, the dispute for which Section 30 can be invoked shall remain confined only (i) as to the apportionment of the amount of compensation or any part thereof, or (ii) as to the persons to whom the amount of compensation (already determined) or any part thereof is payable. The State claiming on the basis of a pre-existing right would not be a “person interested”, as already pointed out hereinabove and on account of its right being pre-existing, the State, in such a case, would not be entitled to invoke either Section 18 or Section 30 seeking determination of its alleged pre-existing right. A right accrued or devolved post-award may be determined in a reference under Section 30 depending on the Collector's discretion to show indulgence, without any bar as to limitation. Alternatively, such a right may be left open by the Collector to be adjudicated upon in any independent legal proceedings. This view is just, sound and logical as a title post-award could not have been canvassed up to the date of the award and should also not be left without remedy by denying access to Section 30. Viewed from this angle, Sections 18 and 30 would not overlap and would have fields to operate independent of each other.

23. From the above analysis of the law on the subject, it is clear that

the remedy of reference under Section 18 is intended to be available only to a person interested upon whom notice has been send during the acquisition proceedings whereas Section 30 of the Central Act, which is in *pari materia* with Section 31 of the J&K Land Acquisition Act, operates not only in respect of persons interested but it would also cover the case of a person whose interest has come into existence post award and it would cover even the cases of persons who was neither present nor represented in the proceedings before the Collector or who were not even served with notices during acquisition proceedings.

24. In the instant case, name of petitioner Nasreena Rashid Banday does not figure in the award of the Collector nor any notice was served upon her during the acquisition proceedings. Thus, she could not have asked for a reference under Section 18 of the Act but she would certainly be within her rights to seek reference of the dispute about her entitlement to share in the compensation assessed by the Collector to the District Court.

25. The Supreme Court in **S. Palani Velayutham** (supra), has emphatically held that the persons whose names are not entered in the revenue records do not lose their claim to compensation. It has been observed that their interests and rights in regard to compensation are protected by the provisions relating to apportionment of compensation and the provisions for referring the disputes to civil courts for apportionment of the compensation.

26. Again, in the case of **Arulmighu Lakshminarasimhaswamy Temple Singirigudi. vs. Union of India and other**, (1996) 6 SCC 409, the

Supreme Court has observed that in a case where there is any dispute as to person entitled to receive the compensation, a reference under Section 30 of the Acquisition Act (Central) to decide the dispute between the competing persons who set up rival title to the compensation is permissible.

27. Applying the aforesaid legal position to the facts of the instant case, it becomes clear that even though petitioner Nasreena Rashid Banday did not participate in the acquisition proceedings and, in fact, no notice was issued to her because her name did not figure in the revenue record, still then, she has a remedy by way of seeking reference of dispute relating to her entitlement/apportionment of compensation in terms of Section 31 of the Act. Since there is no limitation provided for the said purpose, as such, petitioner Nasreena Rashid Banday would be well within her rights to seek reference of the aforesaid dispute to the concerned District Court.

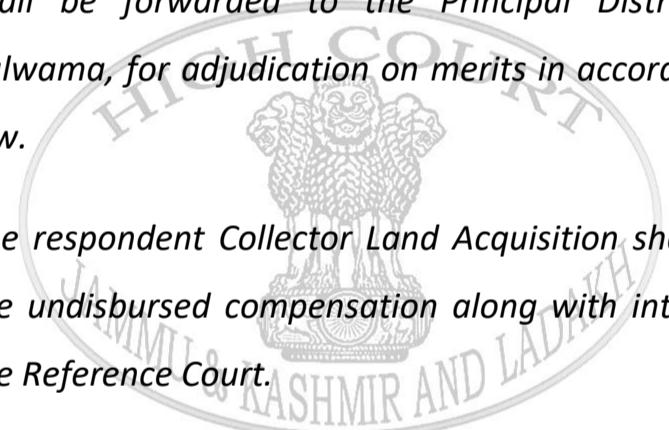
28. So far as the relief claimed by petitioners Mohammad Akram Bhat and others regarding reference, of dispute for determination of compensation and area of acquired land, is concerned, since other land owners whose cases are identical to the cases of aforesaid writ petitioners have got their disputes referred to the Principal District Judge, Pulwama, in terms of reference order dated 02.04.2022 made by the Collector, Land Acquisition, Awantipora, pursuant to the directions passed by this Court in OWP No.1948/2018, therefore, a similar direction can be passed in favour of writ petitioners of WP(C) No.2055/2022.

29. Accordingly, both the writ petitions are disposed of with the following directions:

(I) *Petitioner Nasreena Rashid Banday shall be at liberty to file an application before the respondent Collector seeking reference of the dispute relating to her entitlement/apportionment in the compensation assessed in terms of Section 31 of the J&K Land Acquisition Act and in case any such reference is sought, the same shall be forwarded by the Collector to the Principal District Judge, Pulwama, for adjudication on merits in accordance with law.*

(II) *The writ petitioners of WP(C) No.2055/2022 are at liberty to approach the respondent Collector Land Acquisition to seek reference under Section 18 read with Section 31 of the Act and in case any such reference is sought, the same shall be forwarded to the Principal District Judge, Pulwama, for adjudication on merits in accordance with law.*

(III) *The respondent Collector Land Acquisition shall deposit the undisbursed compensation along with interest with the Reference Court.*



(Sanjay Dhar)
Judge

Srinagar
25.08.2023
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No