

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

*Reserved on: 19.02.2020
Pronounced on: 23.06.2020*

*LPA No.21/2020
CM No.501/2010*

Manzoor Ahmad Bhat & Ors. ... Appellant(s)

Through: - Mr. J. H. Reshi, Advocate.

V/s

Union Territory of J&K & Ors. ... Respondent(s)

Through: - Mr. N. H. Shah, Sr. AAG with Mr.
Shah Aamir, AAG.

CORAM:

**HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR,
JUDGE
HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**

JUDGMENT

Per Thakur 'J'

1) The present Letters Patent Appeal has been preferred against the judgment and order dated 30th of December, 2019, whereby interim direction dated 16.10.2018, has been modified. The Writ Court had earlier, vide order dated 16.10.2018, while issuing notice in the writ petition, stayed the acquisition proceedings initiated vide Notification No.11 of 2016 dated 30.08.2019, for construction of the All India Medical Institute at Awantipora.

2) Counsel for the appellants urged that the judgment and order impugned was passed without hearing the appellants. It was stated that

the writ petition was listed on 30th of December, 2019, but the Bench collapsed due to non-availability of the Hon'ble Judge due to some unavoidable circumstances. It was urged that the Registrar Judicial of the Srinagar Wing of the High Court, accordingly, on the same day i.e. 30.12.2019, notified that the cases would not be taken up by the said Bench. It was stated that the counsel for the petitioners-appellants, on coming to know that the Hon'ble Judge would not be holding the Court, was under a *bona fide* belief that the cases would be adjourned in the normal course and, therefore, was not personally present when the case was taken up by a Coordinate Bench upon a request having been made by the Counsel for the respondents on the same date i.e. 30th of December, 2019.

3) It was urged by the learned counsel for the petitioners that the petitioners were entitled to a detailed hearing, inasmuch as the petitioners had challenged the process of acquisition initiated by the respondents which was otherwise illegal and contrary to the provisions of Land Acquisition Act.

4) On a perusal of the cause list as also notice dated 30th December, 2019, issued by Registrar Judicial of the Srinagar wing of the High Court, it can be seen that the cases listed before the Court on 30th of December, 2019, on account of non-availability of the Hon'ble Judge, could be mentioned before the Coordinate Bench.

5) It appears that the counsel for the respondents made a mention before the Coordinate Bench to take up the matter which was otherwise

listed in the regular cause list and the matter was taken in absence of counsel for the petitioners and the interim order dated 16.10.2018 modified on the same date i.e. 30.12.2019. It was urged that the Writ Court could not have modified the order issued on 16.10.2018 without giving notice to the opposite party. It was urged that the order impugned was in violation of Order 39 Rule 4 of the Code of Civil Procedure. For facility of reference, Order 39 Rule 4 is reproduced herein-below:

“4. Order for injunction may be discharged, varied or set aside.—Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interest of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardships to that party.”

6) A lot of emphasis was laid by the counsel for the respondents that the entire process of acquisition had since been completed before the filing of the writ petition and, therefore, according to latest Apex Court judgments, the Courts would not interfere in the acquisition matters which had attained finality by passing of the award as also by delivery of possession. It was, therefore, urged that notwithstanding the

fact that the counsel for the petitioners was not present, the outcome of the writ petition would, however, remain unchanged.

7) We have heard learned counsel for the parties.

8) The issue that arises for consideration is as to whether counsel for the appellants had sufficient notice in terms of provisions of Order 39 Rule 4 of CPC before the Writ Court could modify the order dated 16.10.2018.

9) Admittedly, the matter was listed in the cause list on 30th of December, 2019, which has to be read with the notice issued by the Registrar Judicial on the same date informing the petitioners/appellants that the matter could be mentioned before the Coordinate Bench for being taken up. The counsel for the appellants, therefore, knew well that the matter could have been taken up by the Bench which was available as was notified in the notice of the Registrar Judicial. In our opinion, counsel for the appellants, therefore, must be deemed to have sufficient notice of the listing of the case and the hearing therein, especially in view of the fact that the objections had been filed by the respondents to the writ petition. In our opinion, there was sufficient compliance with the requirements of Order 39 Rule 4 CPC in the present case.

10) The second issued that requires consideration is whether the Writ Court was justified in exercising its power to modify the order earlier granted on 16.10.2018, or not.

11) Admittedly, by virtue of order dated 16.10.2018, the Writ Court while issuing notice in the writ petition filed by the appellants, had stayed the acquisition proceedings initiated by respondents for construction of All India Medical Institute at Awantipora. Considering the importance of the purpose for which the acquisition was being initiated, the Writ Court deemed it appropriate to vacate the order. We are told that the acquisition proceedings stood concluded and the final award passed. Not only this, even the possession had been taken over by the Medical Education Department. If that be so, in our opinion there was enough justification for the Writ Court to modify the order.

12) For whatever has been stated above, we find no merit in the present appeal, which is, accordingly, dismissed.

(SINDHU SHARMA)
THAKUR)
JUDGE

(DHIRAJ
SINGH
JUDGE

Srinagar

23.06.2020

"Bhat Altaf, PS"

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No