

GOVERNMENT OF JAMMU AND KASHMIR
DEPARTMENT OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS
Civil Secretariat, Jammu

Subject:- Circular Instructions regarding vacation of stay(s) in cases pertaining to the acquisition of land for creation of infrastructural facilities.

Circular No.: 04 - JK(LD) of 2020
Dated:- 30 .03 .2021

It has been observed that due to intervention of Hon'ble Courts in land acquisition matters and consequent grant of interim stay(s) and *status quo* orders, various prestigious projects of strategic and national importance, developmental and other infrastructural works are put to a halt. The Hon'ble Supreme Court in catena of judgments has held that:

- (a) in the matters pertaining to the acquisition of land for creation of infrastructural facilities, which are of national importance, interference of the courts should be minimal;
- (b) in cases of public importance, stalling the land acquisition proceedings is not appropriate and would be against the larger public interest involved in such projects; and
- (c) in matters of immense public importance, the power to grant interim stays under Article 226 of the Constitution should not be exercised in normal course.

In two landmark judgments titled *Bishan Das and Ors v/s UT of J&K and Ors* and *Balvir Singh v/s State of J&K and Ors*, Hon'ble High Court of Jammu and Kashmir, while relying upon the judgments passed by Hon'ble Supreme Court, has laid down that projects of public importance should not be halted, as the same would be against the larger public interests and the constitutional courts should weigh public interests vis-à-vis private interests while exercising its discretion.

The relevant excerpts of these watershed judgments on this issue are:-

1. Bishan Das and Ors v/s U.T. of J&K and Ors; 2021(1)JKJ [HC]81

- Hon'ble the Supreme Court has time and again opined that projects of public importance should not be halted as the same would be against the larger public interests and the constitutional courts should weigh public interest vis-à-vis private interest while exercising its discretion.

2. **Balvir Singh v/s State of J&K and O; (25.11.2020)**

- The purpose of publication u/s 4 of the Act and opined that the objective is to give notice, that may not always be actual. It can be implied as well as constructive. This Court further observed that when huge chunk of land is acquired, acquisition proceedings on the behest of owners of small pieces of land forming part thereof should not be disturbed, especially when the award has already been passed.

3. **Jaipur Metro Rail Corporation Limited v/s. Alok Kotalwala and Ors; AIR 2013 SC 754**

- Suffice it to observe that in such cases of public importance of Metro Rail Project, there should not be any interim stay, rather an effort should be made to decide the matter finally at an early date. Staying the land acquisition proceedings is not appropriate and would be against the larger public interest involved in such projects. Thus, relying upon the decision in the case of Ramniklal N. Bhutta, (AIR 1997 SC 1236) (supra), we hold that in the matter of immense public importance like the present one, the power to grant interim stay under Article 226 of the Constitution should not be exercised in the normal course.

4. **Ramniklal N. Bhutta and another v/s. State of Maharashtra and Ors; AIR 1997 SC 1236**

- Whatever may have been the practices in the past, a time has come where the Courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a Civil Suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers.

5. **Pratibha Nema and Ors. v/s. State of M.P. and Ors; AIR 2003 SC 3140**

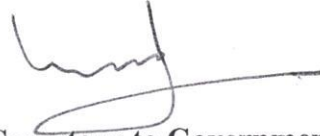
- When no prejudice has been demonstrated nor could be reasonably inferred, it would be unjust and
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inappropriate to strike down the Notification under Section 4(1) on the basis of a nebulous plea, in exercise of writ jurisdiction under Article 226. Even assuming that there is some ambiguity in particularizing the public purpose and the possibility of doubt cannot be ruled out, the constitutional courts in exercise of jurisdiction under Article 226 or 136 should not, as a matter of course, deal a lethal blow to the entire proceedings based on the theoretical or hypothetical grievance of the petitioner. It would be sound exercise of discretion to intervene when a real and substantial grievance is made out, the non-redressal of which would cause prejudice and injustice to the aggrieved party.

Attention of all the revenue officers dealing with land acquisition matters is drawn towards the afore-said judgments for taking necessary steps for vacating the stay orders and status quo orders granted in acquisition matters by citing the ratio laid down in the afore-mentioned judgments, so that the developmental projects of public and national importance are taken to their logical completion in a time bound manner.



**Secretary to Government
Department of Law, Justice and P.A.**



**Principal Secretary to Government
Revenue Department.**

No:- LD(Opn)2021/08-Rev

Dated:- 30-03-2021

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