

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 2616/2021

Pronounced on: 19.12.2023

Villagers of Tengpawa, Sagam,
Ratherpora, Shalnard, Inderwan
and Lisser Kokernag

.... Petitioner/Appellant(s)

Through:- Mr. Rizwan Ul Zaman, Advocate.

V/s

Union Territory of J&K and ors.

.....Respondent(s)

Through:- Mr. Numan Malik, GA.
Mr. S. A. Naik, Advocate

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

1. The petitioners have assailed Order No. Rev/S/270 of 2008 dated 29.12.2008 vide which kahcharie land measuring 407 Kanals has been transferred to SKUAST Kashmir. This petition has been filed by them in representative capacity.

2. The petitioners claim to be the villagers of Tengpawa, Sagam, Ratherpora, Shalnard, Inderwan and Lisser Kokernag consists of more than 25000 chullas and are earning their livelihood from livestock. These villagers belong to nomad community and are maintaining their livestock i.e., cows, bulls, horses, goats and the total number of animals are more than 20000. All these villagers have common kahcharie land measuring 407 Kanals which was being used for grazing purpose of their livestock and the respondents have transferred this land to Sher-i-Kashmir University of Agricultural Science and Technology (SKUAST), Kashmir.

3. The contention of the petitioners is that the Government has allotted land measuring 407 Kanals under different Survey numbers to SKUAST Kashmir vide order dated 29.12.2008 for re-establishment of High Altitude Maize Research Station. This land, according to them, is common Kahcharie land of village Tengpawa, Sagam, Ratherpora, Shalnard, Inderwan and Lisser Kokernag. This land is being used for grazing purposes for the livestock of the villagers. The villagers of these villages belong to economically backward class and maintaining their livestock by grazing in this land. The allotment of land to SKUAST Kashmir for construction purpose is detrimental to the interest of the villagers, as it affects the very existence of their live stock.

4. It is submitted that in terms of the Jammu & Kashmir Kahcharie Act, the right of grazing livestock has been recognized and kahcharie land can be used for grazing purpose of livestock. In addition to this, there is a graveyard and two Eidgahs in the land allotted to the SKUAST Kashmir. The respondents while allotting the land to the SKUAST Kashmir ignored the interest of the petitioners and in an arbitrary and unjust manner allotted the same as they are earning their livelihood from their livestock.

5. Learned counsel for the petitioners has also placed reliance on a judgment titled **Jagpal Singh & ors. vs. State of Punjab & ors.** reported as **(2011) 11 SCC 396** wherein the Hon'ble Supreme Court has held that the kahcharie land was directed to be protected. The petitioners, thus, seek quashing of Order No. Rev/S/270 of 2008 dated 29.12.2008 transferring the kahcharie land measuring 407 Kanals to the SKUAST Kashmir and also allowing the petitioners to graze their livestock without any

interference and further taking necessary steps for protection of rights of the petitioners and also restraining the respondents from raising any sort of construction on the land measuring 407 Kanals.

6. The respondent Nos. 1 to 6, 10 and 11 in their reply have denied the claim of the petitioners to maintain this writ petition on behalf of the villagers of Tengpawa, Sagam, Ratherpora, Shalnard, Inderwan and Lisser Kokernag in representative capacity. They submit that the petitioners are actually a group of land mafia with vested interests, who have already grabbed some partition of the Govt. land and are also involving innocent residents of the area forcibly in the petition. It is submitted that as per their survey, majority of people adjacent to the locality are interested in establishment of SKUAST Kashmir. The Government has transferred 407 kanals of land in 2008 in lieu of 203 Kanals 13 Marlas of land transferred to Department of Tourism belonging to SKUAST Kashmir at Pahalgam and SKUAST Kashmir is in possession of the same for the last thirteen years. The said encroachment on the said land was removed and handed over to SKUAST Kashmir. The respondents also submitted that majority of the people in the adjacent area are interested in the development of this research institute which was forming community in the whole Breng constituency being larges one in the district. The land after removal of encroachment was handed over to SKUAST Kashmir but the petitioners are illegally encroaching/trying to encroach the land. As per the report of Naib Tehsildar, there is more than sufficient kahcharie land available in the vicinity for grazing purposes.

7. The respondent No. 7 i.e., SKUAST Kashmir in his objections stated that resident of Tengpawa Sogam did not agitate the matter of land transfer to the SKUAST Kashmir. The respondents are setting up a Mountain Crop Research Station which is mandated with Research Work on Rice, Maize, Oats, wheat, oilseed and Fodder Crop production besides seed multiplication of high yielding varieties for the benefit of farming community of the area. The land is in possession of respondent No. 7 since 2005 and is utilized for various research trial of cereal crops and pulses of different varieties laying (FLD's) front line demonstrations on horticulture crops. This petition is barred by delay and laches and is required to be dismissed.

8. It is also submitted that the local residents of Tengpawa, Sogam have given in writing consent letter for establishment of the Research Station of SKUAST-K at the time of transfer of said land to the University. The land is being developed in active collaboration with Indian Council of Agricultural Research (ICAR) and BPGR International Maize and Wheat improvement Centre. The respondent further submits that the land is recorded as Banjar Qadeem and benefit of programme would be for all.

9. The Government in order to promote the tourism in the erstwhile State of J&K utilized the said land of SKUAST-K for expansion of Golf Course at Pahalgam with the commitment that they shall allot land measuring 407 Kanals at Sogam Kokernag to the University in lieu of the parted land at Pahalgam, and consequent to which land measuring 407 land was identified and demarcated for transfer to SKUAST-K and this

land was handed over to the Tehsildar Anantnag to the University on 20.01.2005 pursuant to Government order. Government order No. Rev/S/270 of 2008 dated 29.12.2008, sanction was accorded for transfer of 407 Kanals of shamilat/kahcharie land in Sagam Kokernag comprising Khasra Nos. 1356-min, 1398-min, 1642/1398, 1944/1398, 1777/1398 and 1977/1398 in lieu of the land measuring 203 Kanals 12 Marlas situated at Pahalgam which was transferred to the Tourism Department for expansion of Golf Course in favour of Sher-e-Kashmir Institute of Agriculture Sciences for reestablishment of High Altitude Maize Research Station.

10. The land of SKUAST Kashmir was utilized by the tourism department for expansion of Golf Course in Pahalgam committed for allotment of 407 Kanals of land at Sagam Kokernag. The process of handing over and taking over took place on 20.01.2005 without any objection from any of the villagers. This land was transferred for re-establishment of High-Altitude Research Station. The land is being developed in active collaboration with Indian Council of Agricultural Research (ICAR) and BPGR international Maize and Wheat Improvement Centre CIMT. The land is utilized for further extension programme of University for the benefit of farming community. The local residents would be benefitted by certified seeds of various cereal crop and pulses. The setting up of the University, thus, would promote socio-economic growth of farming community as well as other communities of the area.

11. This petition has been filed after a delay of more than 12 years of issuance of the Government Order and the transfer of the land. Though petitioners have submitted that they were not having knowledge of the

transfer order but this does not inspire any confidence as huge land was transferred in the year 2008 and its possession was also taken by respondent No.7. The respondents submit that the decision of the Government/cabinet to transfer the land to SKUAST is even otherwise a decision for public welfare for setting up a Crop Research Station for the benefit of farming community at large and the entire village population. The activity of the Mountain Crop Research Station Sagam is to ameliorate the living of common people and improve of their socio-economic condition. The decision of transfer of land is in public interest and for public welfare.

12. The only issue is whether kahcharie land can be transferred for public purpose. This issue was considered by this Court in **Villagers of Beehama Ganderbal & ors. Vs. State & ors.** reported as **2012 (4) JKJ 297 [HC]** and this Court has held as under:-

“7. This Court in Villagers of Anzwalla v. State, 2012 (3) JKJ HC-213 {OWP No. 399/2010, decided on 12.06.2012}, has held that the Government is within its powers to acquire mehfooz kahcharai land for public purpose when no other land is available and the amount of compensation is to be used for public purposes, payable to the concerned panchayat. It is apt to reproduce paragraphs 5 & 6 herein:

“5. It is settled position of law that Kahcharai Land is the property of the Government; therefore, the petitioners have no individual rights or interest on the said land. The Government is within its powers to acquire it, when the same is for the public purpose, more so, when the amount of compensation on account of the land in question will be utilized by transferring the same to the village Panchayat in terms of Cabinet Decision No. 355 dated 27.03.1979 read with Government Order No. Rev(LAK) 275 of 1979 dated 28.09.1979. A plain reading of the provision of the Land Acquisition Act and the Government order aforementioned, clearly establishes that the Kahcharai Land can be

utilized for the public purpose, when alternate and suitable land is not available.

6. This Court in case *Habibullah Sheikh v. State of J&K*, 2009 (1) SLJ 156 : 2008 (3) JKJ HC-170, incidentally of which am the author, has held that Kahcharai Land can be acquired for public purpose and the amount of compensation in lieu thereof is payable to the concerned Panchayat, in whose jurisdiction land falls, to be spent for welfare of the community of the area in question. It would be apposite to reproduce the paragraphs 5 and 6 of the judgment, which reads as follows:

5. The petitioners have no right or interest over the said land. It is virtually a property of the government but meant for grazing purposes. If kahcharai land is to be acquired for any public purpose the amount is to be spent for welfare of the community. Division Bench of this Court in case titled *Ghulam Mohammad Bhat & others v. State and anr.* reported as SLI 1981 JK 254 has held that if Kahcharai land is acquired, the compensation is payable to the concerned Panchayat in whose jurisdiction land falls. It is the property of the community.

6. If Kahcharai land is acquired, the petitioners have no right to challenge the same. However, the compensation amount is to be utilized for the benefit of the villagers. The villagers are not before the Court The writ petitioners have filed writ petition in individual capacity. The electric department has specifically averred that land came to be acquired for the purposes of construction of Grid Station for public purpose. The petitioners cannot seek any relief against the respondents-Electric Department..."

8. The specific stand of the respondents herein is that SKUAST is in possession of the allotted land which has already been fenced by it. Further, SKUAST has not fenced the land in excess of the land allotted to it.

In these circumstances, the writ petition was dismissed.

13. The petitioners have placed reliance on judgment **Jagpal Singh (supra)**, wherein the Hon'ble Supreme Court had directed the State Government for eviction of illegal/unauthorized occupants of Gram

Sabha/Gram Panchayat/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for common use of the villagers. Further in **PIL No. 19/2011 decided on 09.10.2020** titled **Prof. S. K. Bhalla & ors. vs. State of J&K and others**, the Hon'ble Supreme Court has directed the Government to remove the encroachments on kahcharie land. As the allegation of the respondents is that the petitioners are trying to encroach upon the land for ulterior motive, therefore, these judgments in this case are not applicable in the present facts and circumstances of the case. The respondents have specifically stated that the petitioners are encroachers and land grabbers and there is response to the same. Though the petitioners have tried to carve out a case regarding which they had no knowledge but failed to do so, more so when as the possession of the land was handed over to SKUAST in the year of 2005.

14. The respondents have categorically stated that the petitioners have vested interests in filing this petition as they have encroached upon this land, as such, have filed this petition. Nothing has been brought on record to prove otherwise. It was next argued that the interest of the petitioners has to be considered and the interest for allotting the land to the University cannot take a precedence.

15. In view of the aforesaid facts and circumstances of this case, there is no merit in this petition and the same is, accordingly, **dismissed**.

(Sindhu Sharma)
Judge

SRINAGAR
19.12.2023
Ram Murti/PS

<i>Whether the judgment is speaking</i>	:	<i>Yes/No</i>
<i>Whether the judgment is reportable</i>	:	<i>Yes/No</i>