

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 25.09.2025

Pronounced on: 10.10.2025

Uploaded on 10.10.2025

Whether the operative part or
full judgment is pronounced

Case No.:- OWP No. 496/2012
IA Nos. 677/2012 & 1/2015

Zulafkar Ali & Ors

.....Petitioner(s)

Through: Mr. Rahul Pant, Sr. Advocate with
Mr. Rahil Raja, Advocate.

Vs

State of J&K & Ors.

..... Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG with Ms. Chetna
Manhas, Advocate for R-1 & 2.
Mr. Harshwardhan Gupta, CGSC for R-3 & 4.

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

JUDGMENT

1. The petitioners have challenged Govt. Order No. Home/CL-61/87 dated 29.02.2000 whereby Notice in Form-J issued by Home Department under endorsement No. Home/CL-61/67 dated 08.04.1993 issued in terms of Section 7 of J&K Requisitioning and Acquisition of Immoveable Property Act, 1968 (hereinafter to be referred to as "**Act of 1968**") regarding acquisition of land of the petitioners has been withdrawn. A further direction commanding the respondents

to pay compensation for the land measuring 86 kanals and 07 marlas belonging to the petitioners acquired by the respondents as per prevailing market rate along with interest has also been sought. In the alternative, the petitioners have sought a direction upon respondents No. 1 to 4 to handover to them peaceful and vacant possession of land measuring 86 kanals and 07 marlas along with rent for use and occupation of the said land with effect from the year 1988.

2. As per case of the petitioners, petitioner No. 1 is owner of land measuring 3 kanals 8½ marlas falling in khasra No. 841 situated at village Muradpur, Tehsil and District Rajouri. It has been submitted that besides this, father of petitioner No. 1 was owner of the land measuring 3 kanals 8½ marlas falling in the same khasra number and after his death, the aforesaid piece of land has devolved upon petitioner No. 1 and his brother-petitioner No. 2 regarding which mutation of inheritance bearing No. 724 stands attested in their favour.
3. It is the further case of the petitioners that father of petitioner No. 3, who was a refugee of 1947 from Pakistan Occupied Kashmir was allotted 48 kanals of State land comprised in khasra No. 839 min situated at village Muradpur, Rajouri in terms of Order No. 384/AOQ dated 03.08.1983. After the allotment of the land, mutation bearing No. 279 dated 28.09.1987 was attested in favour of father of petitioner No. 3

in terms of Govt. Order No. 254-C of 1965 thereby conferring proprietary rights upon father of the petitioner No. 3 in respect of the aforesaid land. The said land is stated to have been settled by father of the petitioner No. 3 in favour of petitioner No. 3 by virtue of Settlement Deed dated 25.03.1991 as a result whereof petitioner No. 3 has become the sole owner of the said land after the death of his father.

4. Petitioner No. 4 is stated to be owner of land measuring 28 kanals 18 marlas falling under khasra no. 839 situated at village Muradpur, Rajouri regarding which he has been conferred ownership rights vide mutation No. 66 under Govt. Order No. LB 6-C of 1958 read with mutation No. 68 dated 05.04.1973 under Govt. Order No. 432-C of 1966. It is being claimed that besides this land, father of the petitioner No. 4 was also owner of land measuring 2 kanals 12 marlas falling under khasra No. 840 situated in village Muradpur, Rajouri and after the death of his father, he has become owner of this portion of the land as well.
5. It is case of the petitioners that out of the aforesaid land measuring 86 kanals 07 marlas falling under khasra Nos. 839, 840 and 841 situated at village Muradpur, Rajouri, land measuring 6 kanals 17 marlas falling under khasra No. 841 belonging to the petitioners No. 1 and 2 and land measuring 2 kanals 12 marlas falling under khasra No. 840 belonging to

the petitioner No. 4 was requisitioned for and taken over by the army authorities in the year 1962. Besides this, the army authorities also requisitioned land measuring 6 kanals 17 marlas falling in khasra No. 841 situated in village Muradpur, Rajouri belonging to one Nasir Mohd. Thus, according to the petitioners, total land requisitioned by army authorities in the year 1962 was 16 kanals 06 marlas regarding which Notification was issued by the then Deputy Commissioner, Poonch on 06.10.1962

6. According to the petitioners, the remaining land measuring 48 kanals belonging to the petitioner No. 3 remained under continuous cultivating possession of father of the petitioner No. 3 untill the year 1988 when the army authorities came in possession of the said land. It has been claimed that land measuring 28 kanals 18 marlas belonging to the petitioner No. 4 also remained under continuous cultivating possession of said petitioner till 1988 when it was taken over by the army authorities for defence purposes along with the land measuring 48 kanals belonging to the petitioner No. 3. It has been further pleaded that in addition to the land belonging to the petitioners No. 3 and 4 falling under khasra No. 839, the army authorities also occupied 311 kanals 17 marlas of State land falling under the same khasra number for defence purposes.

7. It has been submitted that after taking over possession of the aforesaid land in the year 1988, proceedings were initiated at the behest of army authorities for acquisition of land measuring 405 kanals 1 marla falling under khasra Nos. 839, 840 and 841, which included 311 kanals 17 marlas State land and 93 kanals 04 marlas private land belonging to the petitioners and one Nasir Mohd. In this regard, respondent No. 2 addressed communication dated 03.06.1989 to Incharge Defence Estates Officer, 25-Infantry Division C/o 56 APO and forwarded the revenue papers for authentication along with requisition order. The Defence Estates Officer, Jammu Circle, vide his communication dated 29.06.1989 authenticated the revenue documents along with tatima shajra duly counter signed by the Deputy Commissioner, Rajouri whereafter the Defence Estates Officer, Jammu Circle asked for more information from respondent No. 2 relating to market rate, cost of fruit bearing and other trees and NOC from the J&K Home Department.

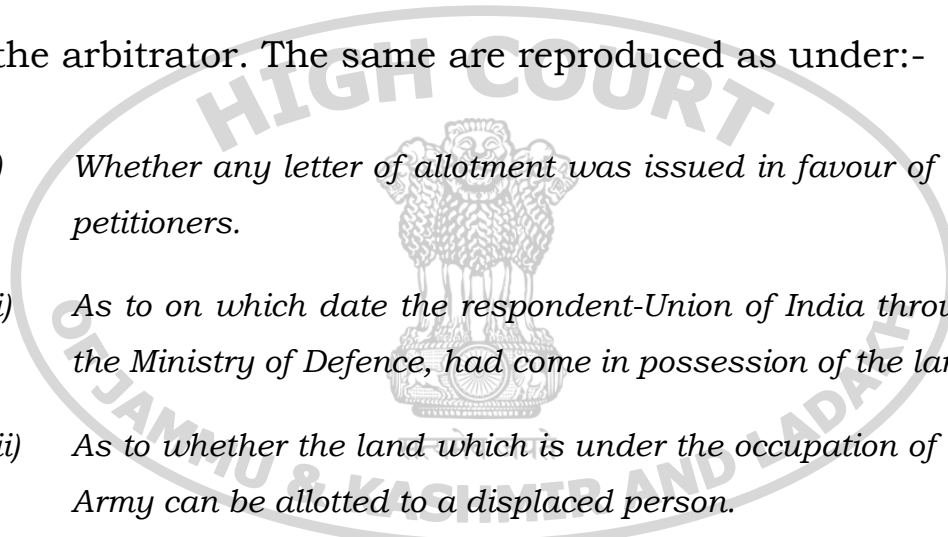
8. It has been further submitted that on receipt of communication dated 29.06.1989, respondent No. 2 processed the case for seeking NOC from J&K Home Department and vide communication dated 16.03.1990, no objection to the acquisition of the land in question was communicated to the Divisional Commissioner, Jammu. Vide communication dated

05.04.1990, respondent No. 2 communicated the market rate prevalent at that time to Defence Estates Officer. After completion of all formalities, respondent No. 2 issued show cause notice in Form-I for acquisition of the aforesaid land measuring 405 kanals 1 marla vide notice dated 17.09.1990. In pursuance to the said notice, consent of the land owners was obtained, which was authenticated by the Tehsildar, Rajouri.

9. The Government of Jammu and Kashmir issued Notice in Form-J under the Act of 1968 and acquired the property of the petitioners as a result whereof the same vested absolutely with the Government free from all encumbrances. Thereafter respondent No. 2, vide his communication dated 23.05.1992, informed the Defence Estates Officer, Jammu Circle to arrange the necessary funds for disbursement of compensation to the land owners. However, the compensation was not disbursed to the land owners/petitioners. According to the petitioners, respondent No. 2 had assessed the rates of land @ Rs. 21,000/- per kanal plus 10% escalation which, according to them, was far below the market rate of the land. It has been submitted that the respondents were bound to pay 80% of the on-account payment of the assessed amount in terms of Rule 9(5) of the J&K Requisitioning and Acquisition of

Immovable Property Rules, 1969 but no such payment was made to the petitioners.

10. It has been submitted that when no compensation was paid to the petitioners, they filed writ petition bearing OWP No. 641 of 1992 before this Court, which came to be decided vide judgment and order dated 01.05.1998. In terms of the said order, respondent-State was directed to appoint an arbitrator in terms of Section 8(4) of the Act of 1968 and as many as seven issues were framed by the Court for their determination by the arbitrator. The same are reproduced as under:-

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- (i) *Whether any letter of allotment was issued in favour of the petitioners.*
 - (ii) *As to on which date the respondent-Union of India through the Ministry of Defence, had come in possession of the land.*
 - (iii) *As to whether the land which is under the occupation of the Army can be allotted to a displaced person.*
 - (iv) *As to what are the implications of the Cabinet decision No. 578-C. The aforementioned cabinet decision makes a clear mention of the fact that if some land which is allotted to a displaced person and is not put under cultivation for a period of six months, then the allottee would have no right in the same.*
 - (v) *The Arbitrator would determine on which date the petitioners were dispossessed. Determination of this question is relevant for the purposes of determining interest if any payable to the person who is to be displaced.*
 - (vi) *The question as to whether any solatium or interest is payable or not, would also be gone into.*

(vii) Any other matter which the parties wish to raise be also gone into.

11. It has been submitted that when no action was taken by the respondent-State, the petitioners filed contempt proceedings before this Court and during its pendency, the Govt. of J&K Home Department issued the impugned notification dated 06.03.2000 whereby Notification in Form-J issued on 28.04.1991 was withdrawn. The respondent-State also issued another order on 20.10.2000 appointing District and Sessions Judge, Rajouri as an ex-officio arbitrator to go into the questions/points referred by this Court in its order dated 01.05.1998 passed in OWP No. 641 of 1992.
12. It has been submitted that learned arbitrator (District and Sessions Judge, Rajouri) vide his judgment and order dated 03.08.2005 returned the reference unanswered on the ground that Government had withdrawn Notification in Form-J in February, 2000, as such, he had no jurisdiction to pass the award. The said order came to be challenged by the petitioners by way of writ petition bearing OWP no. 570 of 2005. In the said writ petition, the petitioners also challenged order dated 29.02.2000 issued by the Government whereby Notification under Form-J was withdrawn.

13. It has been submitted that in the reply filed by respondents No. 3 and 4 to the said writ petition, a stand was taken that mutation attested in favour of the petitioner No. 3 in respect of land measuring 48 kanals had been set aside by Deputy Commissioner, Rajouri vide order dated 10.08.1999 and even though said order had been set aside by the Divisional Commissioner, Jammu, the order of the Divisional Commissioner, Jammu had been stayed by the Jammu and Kashmir Special Tribunal, Jammu (hereinafter to be referred to as '**Tribunal**'), as such, the cancellation of mutation by the Deputy Commissioner, Rajouri continues to be in force. It has been submitted that during the pendency of the said writ petition, the Tribunal dismissed the revision petition against the order of Divisional Commissioner, Jammu and in view of this development, the petitioners withdrew the writ petition, seeking liberty to re-agitate the matter before this Court. Accordingly, in terms of order dated 05.11.2011, writ petition bearing OWP No. 570 of 2005 was dismissed as withdrawn with leave and liberty as aforesaid.

14. In the backdrop of the aforesaid factual situation, the petitioners have challenged the Notification regarding withdrawal of Notice issued in Form-J on the grounds that the same is non-est in the eyes of law. It has been claimed that once Notification in form-J has been issued by the

Government in respect of the land in question, the same vests with the Government as such, there was no power left with the Government to withdraw the said notification. It has been further contended that the army authorities have been continuously using the land of the petitioners but are shirking their obligation to pay the compensation to the petitioners, thereby violating the petitioners' constitutional right to property. It has been contended that acquisition once completed is irreversible and the Government is bound in law to pay just compensation to the land owners and the Government cannot turn around and withdraw the proceedings after the completion of the acquisition proceedings.

15. It has been contended that the respondents have withdrawn the acquisition order without handing over the vacant and peaceful possession of the land in question to the petitioners, which is totally impermissible in law and the same is clearly arbitrary. It has also been contended that the petitioners have a clear title to the land in question and the order of cancellation of mutation has been set aside by the Divisional Commissioner, which order has been upheld by the Tribunal. Therefore, the respondents cannot deny title of the petitioners to the land in question. It has also been contended that it was not open to the learned arbitrator to return the reference

because the reference was made by the High Court and the appointment of the arbitrator was made pursuant to the orders of the High Court passed in OWP No. 641 of 1992, therefore, the withdrawal of Notification under Form-J did not divest the jurisdiction of the arbitrator to decide the issues referred to him by the High court.

16. Respondent No. 2-Deputy Commissioner, Rajouri in his reply to the writ petition has admitted the claim of the petitioner No. 1 and has further admitted that father of petitioner No. 3 was a bonafide refugee of 1947, who migrated to Indian territory from PoK to whom land measuring 48 kanals comprised in khasra No. 839 min situated at village Muradpur, Rajouri was allotted in view of deficiency of prescribed scale of refugee and later on ownership rights under Order No. 254-C of 1965 were conferred in his favour vide mutation No. 279 dated 28.09.1987. It has been further submitted that mutation No. 279 stands set aside by Deputy Commissioner, Rajouri vide order dated 10.08.1999 and this order has been reflected in khasra girdawari of kharif 2002.

17. It has been submitted that land measuring 13 kanals 14 marlas of the petitioners No. 1 and 2 and land measuring 2 kanals 12 marlas of petitioner No. 4 comprised in khasra Nos. 840 and 841 was requisitioned in terms of order of Deputy Commissioner, Poonch dated 16.10.1962. It has been

submitted that whole of the land measuring 405 kanals 1 marlas has been in possession of the army w.e.f, 10.09.1962.

18. Respondent No. 2-Deputy Commissioner, Rajouri has admitted that land measuring 28 kanals 18 marlas has been allotted in favour of the petitioner No. 4 in terms of mutation No. 66 dated 21.03.1973 under Government Order No. LB-6C of 1958 whereafter ownership rights were conferred in his favour vide mutation No. 68 dated 05.04.1973 under Government Order S-432 of 1966 and the said mutation is still in existence. It has been submitted that the petitioner No. 4 is also owner of land measuring 2 kanals 12 marlas which is in possession of Union of India since 1962.

19. Respondent No. 2-Deputy Commissioner, Rajouri has also admitted the process relating to acquisition of the land which culminated in issuance of Form-J. It has been submitted that in terms of impugned communication dated 06.03.2000, form-J has been withdrawn because the Union of India was already in possession of the land in question since 1962. It has been contended that plea of the petitioners that Union of India came into possession of the land in question during the year 1988 is not acceptable as the record available indicates that whole of the land measuring 405 kanals 1 marla is in continuous possession of the army since the year 1961-62, which is clear from the document of communication dated

25.09.1962 addressed by Military Estates Officer to Deputy Commissioner, Poonch.

20. Respondents No. 3 and 4 have also contested the writ petition by filing their reply. In their reply, they have taken a stand that in terms of Section 21 of the General Clauses Act, 1977, an authority who is empowered to pass an order has also power to withdraw, rescind or modify the said order, therefore, the contention of the petitioners that Notification issued under Form-J could not have been withdrawn by the State Government is misconceived. It has been submitted that as per the Act of 1968, there is no period prescribed for acquiring the requisitioned land, as such, it is not obligatory for the said respondents to acquire the land which has been requisitioned by them in the year 1962.

21. It has been submitted that the army authorities had placed a demand for use of land measuring 405 kanals 1 marla at Muradpur, Rajouri out of which 16 kanals and 6 marlas was private land located in khasra No. 840 and 388 kanals 15 marlas was State land falling in khasra No. 839. It has been submitted that vide order dated 06.10.1962 passed by Deputy Commissioner, Rajouri, land measuring 16 kanals 6 marlas, which is private land, was requisitioned in favour of the army authorities. So far as State land is concerned, the same was not requisitioned but was made available to the army

authorities in accordance with Article 256 (2) of Constitution of India.

22. It has been submitted that since entire land was occupied by the army on 10.09.1962, which is clear from the document relating to handing over/taking over executed by Tehsildar, Rajouri on 10.09.1962, there was no question of allotment of any portion of the State land in favour of any of the petitioners thereafter. It has been further submitted that Deputy Commissioner, Rajouri without receiving sanction from Govt. of India proceeded to commence acquisition proceedings by issuing Notice in Form-I and thereafter Notification in Form-J. It has been submitted that Deputy Commissioner, Rajouri has ignored to consider the procedure and the guidelines issued by Ministry of Defence vide Circular dated 04.02.1992, which indicates the measures to be adopted for processing the finalization of land acquisition cases. It has been contended that the process initiated by the Deputy Commissioner, Rajouri with regard to acquisition of land in question is in violation of Cantonment Laws Chapter-29.

23. Respondents No. 3 and 4 have contended that the land, which was admittedly in the use and occupation of army, could not have been allotted to any person by applying the provisions of SRO 578-C as according to the said SRO land allotted to a refugee has to be brought under cultivation within six months

failing which allotment stands cancelled. Once the land was never in possession of the allottees, there was no question of its cultivation by them. Thus, the allotment, if any, is illegal.

24. I have heard learned counsel for the parties and perused record of the case.

25. So far as land measuring 16 kanals 6 marlas in khasra Nos. 840 and 841 situated at Muradpur is concerned, it is not in dispute that the said land is private land out of which land measuring 6 kanals 17 marlas falling under khasra No. 841 belongs to the petitioners No. 1 and 2 and land measuring 2 kanals 12 marlas falling under khasra No. 840 belongs to the petitioner No. 4. The said portion of the land, which is under the occupation of the army authorities was requisitioned in terms of Notification dated 06.10.1962 issued by Deputy Commissioner, Poonch. This portion of the land was also included in acquisition proceedings, which culminated in issuance of Notice in Form-J on 28.04.1992 and subsequent withdrawal notice dated 06.03.2000.

26. The dispute in the instant case is with regard to land measuring 48 kanals, which is claimed to be under the ownership of petitioner No. 1 and land measuring 28 kanals 18 marlas, which is claimed to be under the ownership of petitioner No. 4. This portion of the land is comprised in

khasra No. 839. According to the petitioners, this portion of the land was taken over by the army authorities only in the year 1988 whereas, the stand of the army authorities is that this portion of the land being State land was occupied by them in the year 1962 itself at the time of requisition of private land measuring 16 kanals 6 marlas falling in khasra Nos. 840 and 841. The claim of the petitioners is that only 311 kanals and 17 marlas of State land is in occupation of army authorities whereas, the claim of the army authorities is that they are in possession of State land measuring 388 kanals and 15 marlas, which includes the land measuring 48 kanals claimed by petitioner No. 3 and 28 kanals and 18 marlas claimed by petitioner No. 4. The stand of the army authorities is that once they were in possession of the whole of the State land measuring 388 kanals and 15 marlas in the year 1962, there was no question of allotment of any portion of the said land to the petitioners No. 3 and 4. They have placed reliance upon document of handing over/taking over dated 10.09.1962 executed by Tehsildar, Rajouri according to which, the army authorities have taken over physical vacant possession of 16 kanals 6 marlas of land in khasra Nos. 840 and 841 which is private land and 388 kanals 15 marlas of State land falling in khasra No. 839.

27. The petitioners, on the other hand, have placed reliance upon copy of khasra girdawari for the year 1982 to 1989. As per this document, in rabi 1983 father of petitioner No. 3 is shown to have been allotted land measuring 48 kanals vide allotment order No. 384/AOQ dated 05.06.1983. The said document bears entry for the year 1987, according to which, mutation No. 279 in terms of Govt. Order No. 254-C in respect of the aforesaid land under khasra No. 839 has been attested in favour of father of petitioner No. 3. From the year rabi 1988 onwards, the khasra girdawari bears the entry of army authorities in the column of possession in respect of the said land.

28. It appears that mutation No. 279 attested in favour of father of petitioner No. 3 was set aside by Deputy Commissioner, Rajouri vide his order dated 10.08.1999 at the instance of Govt. through Forest Department. However, the matter did not rest there. The said order came to be challenged by petitioner No. 3 by way of an appeal before Divisional Commissioner, Jammu who, vide order dated 09.01.2004, accepted the appeal and set aside the order passed by the Deputy Commissioner, Rajouri and the parties were directed to get the case finally disposed of from arbitrator appointed by the High Court in terms of order dated 01.05.1998 passed in OWP No. 641 of 1992.

29. In the aforesaid order, the Divisional Commissioner, Jammu has made certain observations which are required to be noticed. It has been observed by the Divisional Commissioner that as per the entry of record of rights for the year 1961-62, land measuring 3042 kanals 16 marlas is under the Forest Department and land measuring 16 kanals 6 marlas is under Defence Department leaving the balance State land out of total of 4277 kanals 12 marlas as 1128 kanals 10 marlas in khasra No. 839, which was available with the revenue authorities for allotment or for other purposes. The Divisional Commissioner, Jammu has further observed that the land that was allotted to father of the petitioner No. 3 was neither in occupation of army nor under the Forest Department and the Tehsildar out of his available land, has allotted 48 kanals to father of the petitioner No. 3 vide allotment order No. AOQ/384 dated 05.08.1983 whereafter mutation under Govt. Order No. 254-C of 1965 came to be attested in his favour on 28.09.1987 whereby proprietary rights were conferred upon him. It has also been observed that the Defence Department took over the possession of land of the petitioner No. 4 in rabi 1988 along with other persons as well as of the State land. The aforesaid order came to be challenged by the Forest Department by way of a revision petition before the Tribunal. However, vide order

dated 21.04.2010, the revision petition came to be dismissed as being not maintainable.

30. So far as the allotment of land measuring 28 kanals 18 marlas in favour of petitioner No. 4 is concerned, the same has never been challenged by any person and mutation No. 68 dated 05.04.1973 under Govt. Order No. 432-C of 1966 attested in favour of the said petitioner continues to be intact.

31. From the aforesaid analysis of the factual situation relating to the case, it comes to the fore that the petitioners No. 3 and 4 are basing their claim on entries in the revenue record i.e., khasra girdawari and the mutations attested in their favour which, as on date, are intact. On the other hand, the army authorities are basing their claim on handing over/taking over document dated 10.09.1962. The question arises as to which of these documents is to be given preference.

32. Unfortunately, the arbitrator appointed by the Government pursuant to the directions of this Court passed in OWP No. 641 of 1992 dated 01.05.1998 has returned the reference without going into the aforesaid issues. Though the petitioners had challenged the said judgment but later on they withdrew the challenge and filed the present writ petition in view of the developments that took place during the interregnum as the claim of the petitioner No. 3 with regard to

the land measuring 48 kanals in khasra No. 839 came to be confirmed by Divisional Commissioner, Jammu and the challenge there against was repelled by the Tribunal. However, neither the army authorities nor the State Government took any steps to challenge the order of the arbitrator or the order of the Tribunal, which have now acquired finality. In the face of this situation, this Court has to determine the issue with regard to entitlement of the petitioners No. 3 and 4 to the land, which is admittedly in possession of the army authorities on the basis of the material, which is available on record.

33. Section 31 of the Jammu and Kashmir Land Revenue Act raises a presumption of correctness in favour of entries in records of rights and annual rights. It provides that any entry made in record of rights in accordance with law for the time being in force or in an annual record in accordance with provisions of Chapter IV of the said Act and the rules thereunder, has to be presumed to be true until the contrary is proved. In view of this provision, the entries made in khasra girdawari with respect to the land measuring 48 kanals under khasra No. 839 carry a presumption of correctness and as per these entries the said land came in possession of the army authorities only in 1988. Besides this, the mutation relating to allotment of the said land in favour of father of the

petitioner No. 3 is also intact and it also carries a presumption of correctness. Similarly, so far as petitioner No. 4 is concerned, he has placed on record copy of extracts of register relating to mutation which clearly shows that the land measuring 28 kanals 18 marlas has been allotted in his favour vide mutation No. 68 dated 05.04.1973 under Govt. Order No. 432-C of 1966. A copy of khasra girdawari placed on record by the said petitioner also reveals that he was put in possession of the said land in kharif 1973.

34. The Deputy Commissioner, Rajouri, in his reply, has not disputed the authenticity of mutation orders attested in favour of father of petitioner No. 3 and petitioner No. 4. His only contention is that mutation in favour of father of petitioner No.4 was later on set aside by the Deputy Commissioner, Rajouri. In the reply filed by the Deputy Commissioner, Rajouri, he has admitted that father of petitioner No. 4 was a bonafide refugee of 1947 who migrated to Indian territory and he was allotted the land in question in view of deficiency of prescribed scale of refugees whereafter ownership was conferred upon him in terms of mutation No. 279 dated 28.09.1987.

35. Respondents No. 3 and 4 have based their claim on the document relating to handing over and taking over of possession of land executed by Tehsildar, Rajouri in favour of

army authorities on 10.09.1962. The said document cannot displace or rebut the statutory presumption of correctness, which is attached to the record of rights and annual record of rights relied upon by the petitioners, which reflects the continuous entries in the revenue record in favour of the petitioners No. 3 and 4 in respect of the land in question. Thus, it cannot be stated that presumption attached to the correctness of these entries has been rebutted by the document of handing over and taking over of possession. Once the petitioners No.3 & 4 have, on the basis of entries in the revenue record, succeeded in raising a presumption that the land in question stood allotted to them/ their predecessor-in-interest, the burden of establishing to the contrary shifted on the respondents. It was, therefore, incumbent upon the respondents to challenge the entries in revenue record or to get the issue determined in their favour from a competent authority but they have failed to do so.

36. The Divisional Commissioner, Jammu has, in his order dated 09.01.2004, observed that land that was allotted to father of the petitioner No. 3 was not in occupation of the army nor the same was under the Forest Department. He has further observed that Tehsildar, Rajouri has, out of the available State land, allotted 48 kanals of land to the father of the petitioner No. 3. These observations have attained finality as neither the

State nor the army authorities have challenged the order of Divisional Commissioner, Jammu as upheld by the Tribunal.

37. In the face of aforesaid position, it can safely be stated that land measuring 48 kanals under khasra No. 839 at village Muradpur, Rajouri was allotted to father of petitioner No. 3 and after his demise, petitioner No. 3 has become owner of the said land. It can also be safely stated that petitioner No. 4 is allottee of land measuring 28 kanals 18 marlas in khasra No. 839 of village Muradpur which previously belonged to the State and was allotted in his favour in terms of Govt. Order No. 432-C of 1966 on 05.04.1973. It is further clear that this portion of the land came into possession of the army authorities only in 1988 and not prior to that.

38. The other question that is required to be answered is as to what relief can be granted to the petitioners in the facts and circumstances of the case as the land which is shown to be under their ownership is admittedly being used by the army authorities. So far as Notification issued in Form-J relating to the land of the petitioners by Deputy Commissioner, Rajouri is concerned, the same has been issued not only in respect of land belonging to the petitioners No. 1 and 2 but the same has also been issued in respect of land belonging to the petitioners No. 3 and 4. The land belonging to the petitioners No. 1 and 2 was admittedly in occupation of the army authorities since the

year 1962 as the same had been requisitioned in terms of Notification dated 06.10.1962 but the land belonging to the petitioners No. 3 and 4, as per their own case, was in their occupation till 1988 meaning thereby it was not requisitioned by army authorities. Even as per the case of the respondents No. 3 and 4, they had not requisitioned this portion of the land. Their stand is that land claimed by the petitioners No. 3 and 4 is State land, and therefore, there was no need to requisition the same.

39. In terms of Section 7 of the Act of 1968, which is in *pari materia* with Section 8 of the Requisitioning and Acquisition Act of Immovable Property Act, 1952 (hereinafter to be referred to as “**Act of 1952**”), which is presently applicable to the Union Territory of J&K, acquisition of only those lands, which have been requisitioned by the Government can be undertaken meaning thereby that Form-J for acquisition of land in terms of Section 7 of the Act of 1968 or Section 8 of Act of 1952 can be issued only in respect of requisitioned land. Admittedly, the land belonging to the petitioners No. 3 and 4 was not requisitioned, therefore, acquisition proceedings in respect of the said land could not have been initiated by Deputy Commissioner, Rajouri. Thus, without going into the question whether Form-J issued by the Government could have been withdrawn, it can safely be stated that acquisition

proceedings in respect of land belonging to petitioners No. 3 and 4 could not have been initiated at all because the occupation of army authorities on the said portion of land was not pursuant to any requisition but the same is unauthorised in nature, as no compensation on account of use and occupation of the same is being paid to the allottees of the said portion of the land.

40. In view of the foregoing facts and circumstances, the petitioners cannot be denied their right to property, which has been elevated to the status of constitutional right. The respondents can utilise the land of the petitioners only after paying the compensation for its use and occupation and in case the army authorities require the said land permanently, they are under an obligation to pay compensation to the petitioners after acquiring the land in accordance with the law. However, the proceedings initiated for acquisition by Deputy Commissioner, Rajouri by issuance of Form-I and Form-J under Act of 1968 cannot be taken to their logical conclusion in the aforesaid facts and circumstances.

41. For what has been discussed hereinbefore, the writ petition is **disposed of** with the following directions:

(a) The respondents shall continue to pay rental compensation to the petitioners No. 1, 2 & 4 in respect of the land measuring 6 kanals and 17 marlas falling in khasra No.

841, and 2 kanals 2 marlas falling in khasra No.840 situated at Muradpur, Rajouri, which has been requisitioned pursuant to Notification dated 06.10.1962 issued by Deputy Commissioner, Poonch till such time, the same is acquired by the respondents or till it is released in their favour.

- (b) Respondent No. 2-Deputy Commissioner, Rajouri shall assess the use and occupation charges in respect of the land measuring 48 kanals comprised in khasra No. 839 situated at Muradpur, Rajouri allotted in favour of father of the petitioner No. 3 and land measuring 28 kanals 18 marlas comprised in khasra No. 839 situated at Muradpur, Rajouri allotted in favour of petitioner No. 4 from Rabi 1988 onwards within a period of two months from the date of this judgment.
- (c) The amount of compensation for use and occupation of land of the petitioners No. 3 and 4 that may be assessed by respondent No. 2-Deputy Commissioner, Rajouri shall be deposited by the respondents No. 3 and 4 with Deputy Commissioner, Rajouri within six months from the date the assessment is made by the Deputy Commissioner, who shall, upon deposition of the compensation, release the same in favour of petitioners No. 3 and 4 as per their entitlement.
- (d) The petitioners are at liberty to make a representation with respondents No. 3 and 4 for acquisition of their land or in the alternative for release of the land in their favour. In case respondents No. 3 and 4 permanently require the land in question, they shall take immediate steps for acquisition of the said land by placing the matter before the competent authority, who shall take decision thereon most

expeditiously preferably within a period of six months from the date a representation is made by the petitioners before respondents No.3 and 4 and in case, the land is not needed any further, the same shall be released in favour of the petitioners within the aforesaid period.

(SANJAY DHAR)
JUDGE

JAMMU
10.10.2025
Naresh/Secy.

Whether order is speaking: Yes

Whether order is reportable: Yes

