

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

**Reserved on: 04.02.2025
Pronounced on: 06. 03.2025**

WP(C) No. 346/2023

Mohan Lal, Age 59 years,
S/o Late Sh. Buta Ram
R/o H. No. 4-A, Ward No. 36, Indira
Colony, Janipur Jammu.

.....Appellant(s)/Petitioner(s)

Through: Mr. G. S. Thakur, Advocate
vs

1. Union Territory of J&K Through
Commissioner Secretariat Revenue, Civil
Secretariat, Jammu.
2. Inspector General of Registration
Jammu & Kashmir, Jammu.
3. Sub Registrar Jammu North Jammu.

..... Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. This petition has been filed by the petitioner for quashing the report No. SRO/JN/22-23/250 dated 06.02.2023 submitted by respondent No. 3 to respondent No. 2 in compliance to the judgment passed by this Court in WP(C) No. 73/2023 stating therein that the kind of the land under sale was 'Banjar Qadeem Arak' which is prohibited for sale and the document of the petitioner has not been found registered. The petitioner has also sought a direction to the respondent No. 3 to register the sale deed dated 09.02.2022 in respect of the land measuring 7 Marlas comprising Survey No. 1142 min, Khata No. 718 min, Khewat No. 64 situated at Village

Paloura Tehsil Jammu North District Jammu and issue sale deed in favour of the petitioner.

2. Earlier, this writ petition was disposed of by the Co-ordinate Bench of this Court vide judgment dated 24.02.2023 but the Hon'ble Division Bench vide its order dated 14.08.2023, set aside the judgment dated 24.02.2023 on the premise that the same was passed by the Co-ordinate Bench of this Court without providing opportunity to the respondents to file objections. The matter was remanded back and this is how the present petition has come up before this Court.
3. It is stated by the petitioner that he had purchased the land measuring 7 Marlas comprising Survey No. 1142 min, Khata No. 718 min, Khewat No. 64 situated at Village Paloura Tehsil Jammu by virtue of two registered sale deeds of 3½ marlas each from one Raghubir Singh and the sale deeds were registered with the Sub-Registrar Jammu (North). After the registration of the sale deeds, the same were reflected in the record of rights and the mutations were attested in favour of the petitioner indicative of the fact that the possession of the land was handed over to the petitioner. It is further stated that Raghubir Singh in turn had purchased the land from the erstwhile owner, namely, Bhag Singh vide sale deed dated 07.03.1982. The petitioner has also got the site plan approved from Jammu Municipal Corporation for raising construction of residential house over the land mentioned above vide sanction dated 14.11.2022. The petitioner decided to sell the above-mentioned plot of land and for that purpose approached the revenue agency for issuance of Fard Intikhab Jamabandi to sell the land. The Fard was issued and after the execution of

the sale deed in favour of one Rakesh Gupta, submitted the sale deed before the respondent No. 3 for its registration. The petitioner paid the stamp duty of Rs. 1,48,110/- and also deposited the registration fee of Rs. 25,390/- which was received by respondent No. 3 vide receipt No. 3683071 dated 10.02.2022. After completing all the requisite formalities for registration of the document and verifying the particulars of the vendor and vendee, the respondent No. 3 directed the petitioner to get the document after three days. The petitioner was made to run from one office to another to get the document which was registered by the respondent No. 3 but could not get the same, as such, the petitioner approached the respondent No. 2 to direct the respondent No. 3 to deliver the document back to the petitioner, as the same stood registered. The respondent No. 2 directed the respondent No. 3 as well as the Deputy Commissioner, Jammu to submit the detailed report which was submitted but no decision was taken. The respondent No. 1 when asked for guidance by the other respondents on 11.11.2022, intimated the respondent No. 2 that Section 133-BB of J&K Land Revenue Act (for short 'the Act') provides that the land in the nature of grazing land, arak has to be used with the permission of District Collector in accordance with the regulations notified by the board.

4. It is contended by the petitioner that as the land is situated within the Municipal Limits, so it does not fall within the definition land in nature of arak or land meant for grazing purpose and the respondents by ignoring the above proposition of law withheld the sale deed submitted for registration. The petitioner thereafter filed the writ petition bearing WP(C)

No. 73/2023 which was disposed of by the Court with a direction to respondent No. 3 to deliver the registered sale deed to the petitioner and in the event, respondent No. 3 intends to withhold the delivery of the document, then to endorse the reasons in writing for doing so and submit report to respondent No. 2. In compliance to the judgment dated 19.01.2023, the respondent No. 3 submitted report to the respondent No. 2 that the nature of the land is Banjar Qadeem Arak and there is a prohibition of sale and registration of sale deed, in respect of such land in view of Section 133-BB of the Act. It is also urged by the petitioner that the Village Paloura has been declared as a residential area and as per the provisions of Section 11 of the Development Act, the Government is competent to notify the area for the Master Plan or for a zone, as the case may be for the purpose of the Development Act. Section 4 of the J&K Land Revenue Act envisages the exclusion of certain lands from the operation of the Act and the land of the petitioner is within the residential area and not assessed to land revenue, therefore the provisions of Section 133-BB of the Land Revenue Act are not applicable. Besides the above mentioned contentions, it is also urged that the provisions of Section 35 of the Registration Act envisages the procedure required to be adopted by the Registrar on admission and denial of the execution and as the sale deed was presented before the Registrar and the parties admitted the contents thereof and also deposited the registration fee, the respondent No. 3 was under obligation to deliver the registered document to the petitioner as indicated in Section 60 of the Registration Act.

5. The respondents have filed the response stating therein that the sale deed bearing Token No. 20220000009363 was presented by the petitioner and Rakesh Kumar Gupta before respondent No. 3 on 10.02.2022 for registration through NGDRS portal and steps upto step 6 were completed. However, before issuance of the final document/certificate of registration in terms of Section 60 of the Registration Act, it transpired that the type of the land mentioned in Fard-e-Intekhab was 'Banjar Qadeem Arak', which is prohibited for sale. The respondents have given the factual aspects of the case which may not be relevant for the purpose of disposal of the present petition. However, it is stated that Fard Intekhab Jamabandi did not mention any reference of Master Plan 2032, which is *sine qua non* for the same and the Department of Law, Justice & Parliamentary Affairs vide communication dated 27.10.2022 has *inter alia* observed that Section 11-A of the Development Act deals with the change of land use falling under any zone or Master Plan and it does not deal with alienation of such land, which therefore is to be governed by the land laws for the time being in force. Section 133-BB of the Land Revenue Act provides that the land which is in the form of grazing land, arak is to be used with the permission of the District Collector in accordance with the regulations notified by the Board and transfer of such land or any interest therein is not permitted and no such document relating to transfer of such land can be admitted to registration. Respondent No. 3 submitted a detailed report dated 06.02.2023 to respondent No. 2 thereby stating that the document under challenge was not found to be registered. Precisely, the respondents have objected the petition by urging that in view of Section 133-BB of the Act,

the sale deed could not have been executed and registered and further that in the records, the document was not registered and steps upto step 6 only were completed.

6. Mr. G. S. Thakur, learned counsel for the petitioner has argued that the land which is the subject matter of the sale deed falls within the Municipal area of Ward No. 38 situated at Paloura, therefore the provisions of Section 133-BB of the Act are not applicable. He has further submitted that the document was registered by the respondent No. 3 and without any authority, he has refused to return the same after its registration.
7. Mrs. Monika Kohli, learned Sr. AAG has submitted that alienation is barred under Section 133-BB of the Act.
8. Heard learned counsels for the parties and perused the record.
9. The question that requires for adjudication of this Court is as to whether Section 133-BB of the Land Revenue Act inserted by SO 3808(E) of 2020 would apply to the land of the petitioner which is situated within the limits of Municipal Corporation Jammu.?
10. In order to answer the above-mentioned question, this Court deems it proper to extract the relevant provisions of law. Section 4 and Section 133-BB of the J&K Land Revenue Act are extracted as under: -

Section 4: Exclusion of certain land from operation of the Act.- (1) Except so far as may be necessary for the record, recovery and administration of village cesses, nothing in this Act applies to land which is occupied as the site of a town or village and is not assessed to land revenue.

(2) An assistant Collector of the first class may define for the purpose of this Act, the limits of any such land.

Section 133-BB: Restriction on use of grazing land, etc. and prohibition on transfer.- (1) The land which is in the form of grazing land, arak, kap or kah-i-krisham or which grows fuel and fodder and belongs to such class as is notified by the Government shall not be used for any other purpose except with the permission of the District Collector who shall accord

permission only in accordance to the regulations notified by the Board.

Provided that such permission shall be deemed to be accorded where land is being acquired permanently or hired temporarily for public purposes under the relevant Act:

Provided further that the transfer of such land or any interest therein shall not be permissible and no documents relating to the transfer of such land shall be admitted to registration.

(2) The Board shall be competent to notify regulations for the purpose of this section.

11. In order to bring the land within the purview of the restriction in terms of Section 133-BB of the Act, it is necessary that the land should be grazing land/arak/kap/kah-i-krisham or which grows fuel or fodder and belongs to such class as is notified by the Government and the same cannot be used for any other purpose except with the permission of the District Collector who shall accord permission only in accordance with the regulations notified by the Board. Further, transfer of such land is prohibited and no document relating to transfer of such land can be admitted for registration.
12. In response to a query by this Court, Ms. Kohli, learned Sr. A.A.G has submitted that the Board has not been constituted till date. The respondents have not been able to deny that the land of the petitioner falls within the Municipal Limits. Rather the permission accorded by the Jammu Municipal Corporation to raise construction of house, placed on record by the petitioner clearly proves the fact that the area is within the limits of JMC. Further, an endorsement has been made on Fard Intekhab Jamabandi that the area falls within the limits of Ward No. 38 of Jammu Municipal Corporation and on spot, the houses and shops are existing around the area. This entry of 'Banjar Qadeem Arak' was made in the year 1959-1960 and the same continues to be so till date. The revenue record in the form of Jamabandi was prepared in the year 1959-60 on the basis of

position existing on spot. Initially, there was Jammu Municipality with limited territorial jurisdiction and with the increase in population, the Municipality of Jammu was replaced by Jammu Municipal Corporation and number of villages were included within the Municipal limits, but the Revenue Department continued with its historical legacy and never bothered to update its record with the changing ground realities.

13. Section 4 of the Land Revenue Act provides that the provisions of this Act shall not apply to the land which is occupied as the site of a town or village and is not assessed to land revenue except as may be necessary for the record, recovery and administration of village cesses. Admittedly, the plot of the petitioner is within the Municipal Limits and is not assessed to land revenue and as such, the Act is applicable only for the limited purpose of record and recovery & collection of Village cesses. Once the provisions of the Act are applicable only to the limited extent for purpose of record and recovery & collection of Village cesses, section 133-B of the Act cannot be applied in the instant case, particularly when the plot of the petitioner is not assessable to any land revenue.
14. The respondent No.1 pursuant to the directions of this Court filed an affidavit and perusal of the same reveals that he too is in a fix, as he has stated that the Government is committed in principle to examine the issue in consultation with the stake holder departments and thereafter the matter would be referred to Board of Revenue. Simultaneously, the respondent No.1 has acknowledged that there is need to relook the entire soil classification system, as it exists today and move towards the classification of kinds of soils into two broad categories- Agriculture and

Non-Agriculture consistent with the requirements of the present times and the Master Plans. It is worthwhile to mention here that the Government is discouraging the use of wood for fuel purpose and that is why has launched many schemes such as Ujjwala etc.

15. In view of above, this court is of the considered view that the action of the respondent No.3 in not registering the sale deed submitted by the petitioner has no sanction of law, as section 133-B of the Act is not applicable in the case of petitioner and the respondent No.3 could not have refused to register the sale deed submitted for registration by the petitioner.
16. Accordingly, the report No. SRO/JN/22-23/250 dated 06.02.2023 submitted by the respondent No. 3 is quashed. The respondent No. 3 is directed to register the sale deed in accordance with law. It is made clear that the respondent No. 3 shall not demand more stamp duty as well as registration fee from the petitioner and the stamp duty and the registration fee already paid by the petitioner shall suffice the requirement of law for the purpose of registration of the sale deed.
17. **Disposed of.**

(RAJNESH OSWAL)
JUDGE

Jammu
06.03.2025
Neha-II

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes