

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

Reserved on: 04.04.2025
Pronounced on: 07.05.2025

WP(C) No. 435/2021

Abdul Majid, aged 69 years S/o Late Qutab-Ud-Din, ...Petitioner(s)
R/o Bathindi, Tehsil & District Jammu.

Through: Mr. Sakal Bhushan, Advocate &
Mr. Rahul Sharma, Advocate.

Vs

- 1. UT of J&K through Commissioner/Secretary, Revenue
Department, J&K Government, Civil Sectt. Jammu.**
- 2. Divisional Commissioner, Jammu.**
- 3. Deputy Commissioner (Collector), Jammu. Respondent(s)**
- 4. Tehsildar, Jammu.**

Through: Mrs. Monika Kohli, Sr. AAG.

WP(C)No. 795/2022

Abdul Majid, aged 69 years S/o Late Qutab-Ud-Din,
R/o Bathindi, Tehsil & District Jammu.
...Petitioner(s)

Through: Mr. Sakal Bhushan, Advocate &
Mr. Rahul Sharma, Advocate

Vs

- 1. Union Territory of J&K through Secretary to Government,
Forest Department, Civil Secretariat, Jammu.**
- 2. Estate Officer (Divisional Forest Officer),
Jammu Forest Division, Jammu.**

**3. Forest Protection Force, Gama Unit J1(Flying Squad),
Through Assistant Director, Narwal Bypass, Jammu.**

....Respondent(s)

Through: Mr. Vishal Bharti, Dy AG

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

INTRODUCTION

The present petitions, clubbed together due to common issues in challenge:

- A. In WP(C) No. 435/2021, the order dated 15.09.2020 passed by Respondent No. 4 (Tehsildar, Jammu) cancelling mutations Nos. 97, 98, and 105 attested in favor of the petitioner.
- B. In WP(C) No. 795/2022, the demolition of the petitioner's properties (including "Grand Hill" restaurant) by the Forest Department without due process, seeking compensation and restraint on interference.

GIST OF THE CASES

- A.** The petitioner purchased land measuring 12 Kanals 7 Marlas in Khasra No. 59/41, Dawara, through registered sale deeds (2000–2004). Mutations were duly attested, and revenue records reflected his ownership.
- B.** In 2012, the petitioner constructed "Grand Hill" restaurant after obtaining necessary permissions.

C. In 2020, Respondent No. 4 cancelled the mutations without notice, citing irregularities under Government Order (GO) LB-6/C of 1958 and GO S-432 of 1966. The Forest Department subsequently demolished structures in 2022, alleging encroachment on forest land.

KEY CONTENTIONS RAISED BY PETITIONER

- A. Violation of natural justice (no notice/opportunity heard).
- B. Misinterpretation of GOs LB-6/C (1958) and S-432 (1966), which conferred proprietary rights.
- C. Demolition was illegal, without demarcation or proof of forest land encroachment.

KEY CONTENTIONS RAISED BY RESPONDENTS

- A. Mutations were fraudulent; land was "Banjar Qadim/Ghair Mumkin" and ineligible for regularization.
- B. Demolition was justified as per Financial Commissioner's 2015 order (though petitioner was not a party)

FACTUAL MATRIX OF THE CASE, WP (C) No. 435/2021

1. The petitioner acquired the land measuring 12 Kanals through various sale deeds. Vide Sale Deed dated March 8, 2000, executed by Noor Bibi, widow of Mohd Yaqoob, and Arshad Bibi, daughter of Mohd Yaqoob, residents of Village Dawara, Tehsil Samba (now Tehsil Jammu), the land

measuring 8 Kanals located at Dawara Tehsil Samba, encompasses Khasra No. 59/41, Khewat No. 17/17, and Khata No. 45/39 has been purchased by petitioner. This acquisition was formalized through a sale deed, duly registered by the learned Sub-Registrar, Samba. On February 5, 2002, sale deed executed by Moorad Ali, son of Mohd. Yaqoob for land measuring 4 Kanals, identified by Khasra No. 59/41, Khewat No. 17, Khata No. 45, located in Dawara Tehsil Samba (now Tehsil Jammu), along with a sale deed dated 11.06.2004 executed by Arshad Bibi in favour of the petitioner concerning land measuring 7 Marlas, identified by Khasra No. 59/41, Khewat No. 10 min, Khata No. 25 min, situated in Dawara Tehsil, Samba was purchased by the petitioner. The sale deeds have been properly registered by the Sub Registrar based on mutation numbers 97, 98, and 105, which have been attested in favour of the petitioner. His name is also recorded in the revenue records as the owner in possession of 12 Kanals 7 Marlas of land, encompassing Khasra No. 59/41, Khewat No. 17/17, and Khata Nos. 45/39 and 25.

2. The petitioner asserts that respondent no. 4, in the petitioner's absence and without prior notification, issued the impugned order dated 15.09.2020, which annulled all mutations, including those confirmed in favour of the former owners, without serving any notice or summons or following the legally prescribed procedure, thereby affecting red entries on the register of mutation with red ink entries.

3. The petitioner asserts that prior to the purchasing of the land, the previous owners applied to the revenue authorities and obtained a “Fard Intekhab” dated 02.03.2000, a “Jamabandi,” and a “Titma Shajra” for the land in question from the concerned Patwari. Following verification, the petitioner negotiated and purchased the land, which measures 12 kanals and 7 marlas, through three distinct Sale Deeds registered by the Sub-Registrar Samba.
4. The petitioner asserts that he constructed a restaurant, referred to as “Grand Hill,” in 2012 on a portion of the *contested land*, after having secured all necessary permissions from the relevant authorities, while the remaining land was enclosed by iron fencing, and he operated his business on the *contested land*. The concerned authorities at that time authorised the construction of the aforementioned restaurant, and the petitioner conducted his business continuously and without obstruction.
5. The petitioner contends that the respondent no. 4 failed to issue any notice or summons to the petitioner or the previous owners prior to the issuance of the impugned order. The petitioner asserts that the land was acquired through duly registered sale deeds, which are considered valid documents and have not been challenged in any court of law. Prior to issuing an impugned order, it was imperative for the respondents to have either issued a show cause notice or undertaken an on-site inquiry on the ownership, title, and possession of the petitioner. Nonetheless, without following due process of law, the mutations have been annulled by

respondent No. 4 based on purported directives made by respondent No. 3.

6. The petitioner asserts that the impugned order dated 15.09.2020, which annulled the aforesaid mutations, was issued by respondent no. 4 without prior notice to the petitioner. This issue has been explicitly articulated by the petitioner in Paragraph 3 of the writ petition; however, the respondents have failed to refute this claim in their reply. Therefore, the petitioner contends that the impugned order should be annulled on this basis alone.

REPLY ON BEHALF OF RESPONDENTS

7. *Per contra* learned counsel for the respondents contends that the petitioner has falsified the facts and approached this Court with unclean hands; hence, the petitioner is undeserving of any equitable treatment, particularly the relief sought in the writ petition. The writ petition is liable to be dismissed on this basis.
8. It is further submitted that allegations made by the petitioner against the responding parties lack foundation and merit. The writ petition filed by the petitioner is devoid of any merit and therefore warrants dismissal.
9. The Respondents contend that a comprehensive report was presented to respondent No. 3 (Deputy Commissioner) vide reference No. TJ/OQ/2020-21/244 issued 12.09.2020 regarding the encroachment of forest land under Khasra No. 59/41 located in Village Dawara, Tehsil Jammu, encompassing all facets of revenue records from 1957 onwards for Khasra No. 59/41 and subsequent mutations. The Deputy

Commissioner of Jammu, after reviewing the revenue record and Government Order Nos. LB-6/C of 1958 and S-432 of 1966 indicated that, according to the obligatory stipulations outlined in Government Order No. LB-6/C of 1958, the occupant of State land must have been in cultivation possession during Kharif 1957, and the land must be cultivable. In this instance, the land is recorded as 11K-16M "Banjar Qadeem" and 0K-11M "Ghair Mumkin Aad Banna" in the Jamabandi of the year 1957-58. Consequently, the mutation No. 63 of village Dawara recorded and attested under Government Order No. LB-6/C is entirely unlawful and void ab initio, failing to comply with legal standards, and has been annulled; thus, mutation Nos. 97, 98, and 105 related to Khasra No. 59/41 located in village Dawara, Tehsil Jammu, have also been nullified. It has been contended that the area designated as Khasra No. 59/41 is owned by the State.

FACTUAL MATRIX OF THE CASE, WP (C) No. 795 of 2022

10. The petitioner contends that he acquired 8 Kanals of land in Khasra No. 59/41 min, Khewat No. 17/17, Khata No. 45/39, located in Dowara, Tehsil and District Jammu, by a sale document executed and recorded on 08.03.2000. The petitioner acquired an additional parcel of land of 4 Kanals, located in Khasra No. 59/41 min, Khewat No. 17, Khata No. 45 min, in Dowara, Tehsil & District Jammu, by a sale document executed on 05.02.2002 and registered on 07.02.2002. The land in question is located next to the "Grand Hill" Restaurant, which is also owned by the petitioner.

The structures which existed on the specified land prior to the unlawful demolition by respondent no. 2 as follows:

- a) Twelve staff quarters, each measuring 138 feet by 11 feet.
- b) Event hall dimensions: 70 feet by 22 feet.
- c) Kitchen and washroom measuring 70 feet by 10 feet.
- d) Event hall dimensions: 82 feet by 15 feet.
- e) Office and staff room measuring 40 feet by 25 feet.

11. The petitioner asserts that following a complaint lodged by Syed Shabir Ahmed with the State Vigilance Commission regarding unlawful construction on forest land, the Commission established a joint committee consisting of officials from the JDA, Revenue Department, and Forest Department. This committee demarcated the land and submitted its report on 15.02.2017, which indicates that the petitioner did not occupy any portion of the forest land.

12. The petitioner asserts that, notwithstanding the report dated 15.02.2017, which clearly established that the petitioner does not occupy any forest land, the Assistant Director of the Forest Protection Force in Jammu issued a notice bearing NO. AD/Opr/JI/170-71 dated August 4, 2020, addressed to the petitioner for illegal construction on the forest land.

13. The petitioner asserts that upon receiving the aforementioned notice, he visited the office of Respondent No. 3 and submitted all relevant documents concerning his properties, along with a written response dated 11.08.2020, in which he unequivocally stated that he was not in possession of any forest land. After a lapse of seven months, the

Respondent No. 2 without considering the joint demarcation report dated 15.02.2017, in which the forest department was itself a party, issued a show cause notice dated 22.02.2021 adopting a conflicting position to the prior joint demarcation report dated 15.02.2017, asserting that the petitioner was shown to be in unauthorised occupancy of 12 Kanals of forest land in Compartment No. 65/Ch of Raika Beat inside the Bahu Forest Block of Jammu Forest Range. The petitioner responded to the show-cause notice on 13.03.2021, asserting that the land description in the notice dated 22.02.2021 was ambiguous, as it lacked any reference to a Khasra number, rendering it impossible for the petitioner to identify the relevant land.

14. The petitioner asserts that respondent no. 2, after evaluating the aforementioned circumstances, issued a subsequent notice bearing No. EO/JFD/3404-06 dated 13.10.2021 deeming the petitioner's response dated 13.03.2021 as inadequate, without even taking into consideration the joint demarcation report that constituted the foundation of the response. The petitioner was instructed to vacate the purported forest land, which was ambiguously characterised as "illegal occupation/construction for commercial purposes on 12 Kanal of forest land located in Compartment No. 65/Ch of Bahu Forest Block," and was further directed to present legal documents regarding the aforementioned forest land at the office of respondent no. 2. On 18.11.2021, the petitioner, through counsel, responded to the aforementioned notice, reiterating to Respondent No. 2

that the joint demarcation report dated 15.02.2017 had become final, unchallenged by any involved parties, including the Forest Department. The petitioner also proposed to conduct an additional joint demarcation for the satisfaction of Respondent No. 2.

15.The petitioner asserts that the respondent no. 2, after a delay exceeding four months, issued a response on 27.03.2022 without considering the aforementioned reply. On Sunday, a holiday when courts are closed, individuals unlawfully entered the petitioner's property located in Khasra No. 59/41, accompanied by a team of officers and police, and illegally demolished the structures in question, prompting the petitioner to file the instant petition before this Court.

REPLY ON BEHALF OF RESPONDENTS

16.Conversely, Mr Vishal Bharti, the learned Deputy Advocate General, contends that the instant writ petition filed by the petitioner is founded on falsehoods, is frivolous, and involves manipulations of records presented in the case, aimed solely at wasting the Court's valuable time. The instant petition must be dismissed as it fails to reveal any procedural irregularity warranting judicial review by this Court.

17.The respondents assert that the land in question is designated as Reserved Forest Land under Khasra No. 59/41, situated within Forest Compartment No. 65/B of the Bahu Forest Range, which is classified as a Wildlife

Conservation Reserve Area. This designation is corroborated by the revenue records, which indicate it as "Gair Mumkin Jarh," as evidenced by the judgement dated 10.03.2015 issued by the Court of Financial Commissioner, Revenue in the case of Hassan Mohd & Ors vs. State of J&K through the Commissioner Secretary of the Forest Department. The Collector, Deputy Commissioner Jammu, issued an order under endorsement No.DCJ/88/mutation-Dwara/2020-21/1148, dated 14.09.2020, and has annulled mutations No. 63, 64, 97, and 98 in Khasra No. 59/41 min. Consequently, it is submitted that the instant petition be dismissed since it is not legally maintainable.

ARGUMENTS FOR THE PETITIONER

18.Mr. Bhushan, the learned counsel for the petitioner, has invited the Court's attention to the order dated 15.09.2020 (hereinafter referred to as the "impugned order") issued by respondent No. 4, i.e., Tehsildar Jammu, a perusal of this order indicates that the District Collector of Jammu has exercised appellate authority under Section 11 of the Land Revenue Act (hereinafter referred to as the "Act"), thereby addressing the reference made by respondent No. 4 and nullifying the mutations deemed fraudulent by the respondents. To elucidate the matter at hand, the petitioner's counsel has invited this Court's attention to Section 11(a) of the Act, which is verbatim reproduced for convenience as follows:

“11. Appeals - Except as otherwise stipulated by this Act, an appeal may be filed against an original or appellate order issued by a Revenue Officer as follows:

(a) to the Collector when the order is issued by an Assistant Collector of either category;”

19. A cursory examination of the aforementioned statutory provision reveals that an appeal may be filed from an original or appellate order of a Revenue Officer to the Collector only if the order is issued by the Assistant Collector of either class. Significant stress has been placed on the aforementioned statutory provision, leading to an unequivocal conclusion that the Collector may exercise appellate jurisdiction if the order is issued by the Assistant Collector and the appeal is filed by an aggrieved individual.

20. The learned counsel for the petitioner has additionally invited this Court's attention to Section 15 of the Act, which indicates that the suo-moto powers may only be exercised by the Financial Commissioner in accordance with Section 15(1) and by the Divisional Commissioner in strict adherence to Clause 15(2) in conjunction with sub-section 3 of the aforementioned statutory provision. In the present case, the appellate authority under Section 11 of the Act has been exercised by the concerned Collector, despite the absence of an aggrieved party and without providing the petitioner an opportunity to be heard, a fact that the respondents have not contested.

21.To substantiate his submissions, the petitioner's counsel has placed reliance upon the judgment passed by a Co-ordinate Bench of this Court in the case captioned, "*Mohd. Farooq vs. UT of J&K and ors*", in WP(C) No. 2571/2021, decided on 07.02.2023 in which the Court held that the appellate authority cannot exercise its powers *suo moto* under like facts and circumstances. The Court has additionally noted that such jurisdiction must be requested by an aggrieved individual.

22.In the present instance, there is no aggrieved party; hence, as asserted by the petitioner's counsel, the Collector could not have exercised suo-moto authority in issuing the impugned order. He has additionally invited the Court's attention to paragraph 2 of the aforementioned order, which upon examination, indicates a complete misinterpretation of the stipulations of Government Order No. LB-6/C of 1958, which established a scheme by the Government to classify occupants of State Land, including land vested in the State under the Big Landed Estate Abolition Act of 2007 and land from which ejectment was mandated under Council Order No. 40-C of 1944, but where ejectment had not occurred by Kharif 1957-58, as "tenants-at-will" for the area they cultivated or occupied during Kharif 1957-58, contingent upon specific initial conditions. For ease of reference, Order No. LB-6/C of 1958, dated June 5, 1958, is reproduced as follows:

1. "(a) The occupant shall pay land revenue at-

- (i) Rs.10 per kanal, where the land is an orchard, maliari land or a seed farm:**

(ii) Rs.5/- per kanal, where the land is a plantation of trees other than fruit trees or is covered by a shop or other structure used for commercial purposes:

(iii) Rs.2.40 per kanal, where the land is covered by a residential building or is used for raising grass:

(iv) Village rates including cesses and other dues for the time being in force in case of land other than that mentioned in sub-clauses (i), (ii) and (iii).

(b) The arrears of revenue as calculated under clause (a) shall be paid from the date of occupation subject to a maximum of fifteen years prior to Kharif 1957-58, provided that, the arrears for more than five years but less than ten years may be paid in three and those for more than ten years in five equal annual installments;

(c) the occupants shall not-

(i) transfer the land or any interest therein; or

(ii) sub-let the land for more than two successive harvests or, with the permission in writing of a revenue officer not below the rank of a Tehsildar, for more than three years: or

(iii) where the land is used for growing paddy, maize or what crop, convert it into an orchard or plantation or otherwise render it unfit for the cultivation of such crops: or

(iv) fail to cultivate the land for more than one year or neglect to conform to standards of cultivation prevalent in the village.

Explanation:- The land covered by a "shop" or "structure for commercial purposes" or "residential building" shall be deemed to include the land appurtenant to such shop, structure or residential building.

2. Nothing contained in paragraph 1 shall apply to such land as is-

(i) Held by occupants, who do not reside or own any land in the village in which the land occupied is situate;

(ii) Recorded or used as path-way, grazing ground, graveyard, cremation ground camping ground, khul (irrigation channel) or forest demarcated or otherwise including Berun line:

[1][xxxx]

(iii) Held by any Government Department or institution under the control of the Government;

(iv) Situated on a hill slope and likely to be affected by erosion;

(v) Situated within the limits of a Municipality, [2][a town area] a Notified Area or a Cantonment or in areas to which rules for the grant of land for building purposes of other rules and orders in respect of Nazool lands for the time being in force extend;

(vi) Allotted to or left with the displaced persons under the provisions of Cabinet Order No. 578-C of 1954 dated 7th May, 1954;

[3] [(vii) in excess of 100 kanals; or is held by occupants whose ownership or tenancy holding or both together with the area so occupied exceeds 100 kanals to the extent only of such excess;

Provided that it is not laid with an orchard or that there are no permanent structure standing thereon.]

[4] [(viii) held by a displaced family or a person other than a displaced person, in excess of the Unit prescribed under Cabinet Order No. 578-C of 1954 dated 7th May, 1954;

Provided that the land so cultivated was neither virgin nor was recorded as Banjar Quadim or 'Ghair Mumkin' during the last settlement and was not such at the time when it was broken.]

3. No land of which the possession or occupation is sought to be regularized in accordance with these provisions shall be deemed to include trees of any description standing thereon

but the occupants thereof shall be responsible for the preservation, maintenance, and upkeep of such trees.

4. *A tenant-at-will who does not accept or who contravenes any of the conditions land in paragraph 1 and the [5] [transferee] or sub- lessee of such a tenant, shall be ejected and the land revenue calculated under clause (a) of paragraph 1 for the period of occupation shall, subject to a maximum of 15 years, be recorded for him”.*

23.Mr. Bhushan has additionally invited this Court's attention to the Exclusion Clause, specifically regarding paragraph 2 of the aforementioned Government Order, which upon examination, indicates that certain lands listed in paragraph 2 have been excluded from the advantageous provisions of paragraph 1. To bolster his arguments, he asserts that the proviso included in the aforementioned Government Order stipulates that any land **“held by any Government department or institution under the control of the Government”** is categorised as one of the lands referenced in Clause (iii) of paragraph 2 of the said order, which is exempted from the advantageous provisions of paragraph I of the same order. He has additionally contended that there exists another stipulation that qualifies the aforementioned exclusion, indicating that the area referenced in the Exclusion Clause was neither virgin nor designated as **“Banjar Qadim”** or **“Gair Mumkin.”**

24.A comprehensive interpretation of the qualifying proviso alongside paragraph 2 of the Exclusion Clause yields an unequivocal conclusion that land classified as either virgin or designated as **“Banjar Qadim or Gair**

Mumkin” is encompassed within the advantageous stipulation of paragraph 1 of the aforementioned order. He has further emphasised that a cursory examination of the qualifying proviso in conjunction with paragraph one of Government Order No. LB-6/C of 1958, it is unequivocally evident that "Banjar Qadim or Gair Mumkin" land will also be encompassed by the advantageous stipulation of paragraph 1. Conversely, the respondents have attempted to assert that "Banjar Qadim or Gair Mumkin" land does not qualify under the advantageous stipulation of paragraph 1, which, if accepted, would contradict the intent and essence of the beneficial provision outlined in Government Order No. LB-6/C of 1958 would result in the forfeiture of the same objective for which the aforementioned policy was established, subsequently followed by another Government Order No. S-432, dated June 3, 1966, which gave ownership rights over the specified land.

25. The learned counsel further contended that no objections were raised during the intervening period from 1958 to 1966, when the legal heirs of the individual from whom the land was acquired were enjoying the status of tenant-at-will, and thereafter, based on Government Order No. By S-432 of 1966, dated June 3, 1966, ownership rights were granted, and the status was altered from tenant-at-will to proprietor/owner of the specified land. The assertion is based on the aforementioned Government Order, which must be interpreted alongside the LB-6/C of 1958 order, the mutation was duly attested. Consequently, a Fard was issued by the

Revenue Department, and the Sale Deeds were registered, which remain valid and have not been challenged by any aggrieved party before any forum, a fact that the respondents have not disputed. Conversely, the respondent No. 4, in issuing the impugned order, has referenced the order issued by the Collector on 14.09.2020, which has noted that the mandatory requirements outlined in the Government Order No. are applicable. According to LB-6/C of 1958, the occupant of the State land must have been in cultivating possession during Kharif 1957. Following an inquiry conducted by respondent No. 4, the land for which the mutation was executed was classified as “Banjar Qadim or Gair Mumkin” in Kharif 1957.

26. In the present case, a cursory examination of the order dated 14.09.2020, which has not been contested by the petitioner, reveals that the concerned Collector exercised suo-moto powers in issuing the order. This order addresses the reference from the Tehsildar, Jammu, by annulling mutations No. 63, 64, 97, 98, 122, and 140 of village Dawara. Consequently, the land measuring 26 kanals and 7 marlas under Khasra No. 59/41, located in village Dawara, has been escheated to the Government, a process that deviates from the procedures outlined in the Act.

27. The respondent, in issuing the impugned order, operated under the assumption that the beneficiary had not been cultivating the specified land and was consequently ineligible to be recognised as a tenant-at-will (under

the State) for the land in question. In this context, the disputed mutations of village Dawara were recorded and certified, based on a misinterpretation of the intent and provisions of Government Order No. LB-6/C was found *void ab initio* and subsequently annulled. Consequently, the purported fraudulent alterations, according to the respondents' counsel, were likewise annulled.

28. The petitioner asserts that the contested order, which annulled mutation Nos. 97, 98, and 105, was issued by respondent No. 4 without providing any notice to the petitioner. This assertion is explicitly stated in paragraphs 3, 7, 8, and 11 of the petition and has not been contested by the respondents. Consequently, on this ground alone, the impugned order fails to meet legal standards and should be annulled.

29. The learned counsel for the petitioner has emphasised that the impugned order was issued by respondent No. 4, the Tehsildar of Jammu, based on directives from the Deputy Commissioner of Jammu. It is asserted that respondent No. 4 lacks the jurisdiction under the Act to issue a quasi-judicial order for the cancellation of mutations, as this action was taken solely on administrative instructions from the Collector, without involving the petitioner or granting an opportunity of being heard. The learned counsel for the petitioner asserts that the Deputy Commissioner lacks the administrative authority to annul a mutation, a matter previously addressed by a Co-ordinate Bench of this Court in the case titled "***Om Parkash and others Vs. UT of J&K and Others***" in WP(C) No.

2360/2021, decided on 02.03.2024. He further contended that this is not a situation where an order issued by the Assistant Collector has led the aggrieved party to appeal to the appellate authority, which has exercised its powers under Section 11 of the Act. Rather, the Deputy Commissioner of Jammu has improperly invoked suo-moto powers under Section 11 of the Act, responding to the reference made by the Tehsildar of Jammu and nullifying the mutations, a procedure that contravenes the intent and provisions of the Act. Consequently, from whatever perspective, the learned counsel for the petitioner asserts that the impugned order fails to meet legal standards and should be annulled.

30. The petitioner's counsel has invited this Court's attention to the objective and intent underlying the issue of Government Order No. LB-6/C of 1958, dated 05.06.1958, was commendable at the time, aimed at enhancing agricultural activities in the State of Jammu and Kashmir during the 1950s and early 1960s by cultivating more uncultivated "Banjar Qadim" and uncultivable "Gair Mumkin" State land to augment food production in the region. In this context, extensive areas of land were transferred to the State as a result of land reforms enacted under the Big Landed Estates Abolition Act of 1950. The subsequent policy established through the Government Order of 1958 aimed solely to enhance the welfare of the occupants of the state land and to promote agricultural activities on State lands, including those designated as "Banjar Qadim" and "Gair Mumkin." Conversely, he contends that the respondents have completely

misinterpreted the stipulations of aforesaid Government Order. The interpretation of the qualifying proviso in paragraph 1 of LB-6/C of 1958 is generating unnecessary confusion. If the respondents unpleaded position is accepted, it would undermine the fundamental purpose of Government Order No. LB-6/C of 1958, which, according to learned counsel, aimed to enhance the benefits for occupants of State land to promote agricultural activities, including those classified as “Banjar Qadim and Gair Mumkin.” Consequently, the petitioner’s counsel asserts that the accurate interpretation of the aforementioned Government Order is that the advantageous provisions of paragraph one shall, in practical terms, apply regardless of whether the subject land is classified as virgin or designated as “Banjar Qadim or Gair Mumkin.” Any contrary interpretation would undermine the fundamental purpose for which LB-6 was enacted.

ARGUMENTS FOR THE RESPONDENTS

31. Mrs. Monika Kohli, learned Senior AAG contends that the order dated 14.09.2020 issued by the Deputy Commissioner, Jammu has not been challenged by the petitioner to date, and in the absence of a specific challenge to the aforementioned order, the arguments presented by the counsel for the petitioner are unsubstantiated and cannot be accepted. She additionally asserts that the aforementioned order has been submitted by the respondents, the Forest Department, as Annexure-5 in the reply to

petition No. WP(C) 795/2022, which, despite the petitioner's awareness, has not been challenged to date.

32. The learned counsel, during the argument, cited Section 19(a) of the Act, which authorises a Revenue Officer to refer a case within his jurisdiction to a subordinate Revenue Officer for inquiry and report, allowing him to resolve the case based on such inquiry and report in accordance with the aforementioned provision. For ease of reference, Section 19(a) is reproduced as follows:

“[19-A] A Revenue officer may delegate a case within his jurisdiction under this Act to a subordinate Revenue officer for investigation and reporting, and may render a decision based on the findings of such investigation and report.”

33. Relying on the aforementioned statutory provision, the respondents' counsel asserts that a report was solicited from the Tehsildar of Jammu in accordance with this provision, which served as the foundation for the Deputy Commissioner's order. Consequently, the Deputy Commissioner of Jammu, acting as Collector, has adhered strictly to the statutory provision. This is evidenced by the order's introduction, which references the report from the Tehsildar regarding the improperly and illegally attested mutation.

34. The learned counsel for the respondents asserts that the appropriate authority to contest the mutation order is before the Revenue Officer, rather than through a writ petition. Consequently, she argues that the writ petition is not maintainable and should be dismissed.
35. The learned counsel for the respondents has invited this Court's attention to a comprehensive order dated 10.03.2015 issued by the Financial Commissioner Revenue, Jammu (acting in the capacity of Commissioner of Agrarian Reforms), which upon examination indicates that the revision petition submitted by Hasan Mohammed and others has been rejected for lacking merit, resulting in the annulment of all unlawful entries in the revenue records pertaining to Khasra Nos. 59/41 and 56, together with other referenced Khasra numbers.
36. The Financial Commissioner Revenue (Commissioner Agrarian Reforms), J&K Jammu, in issuing the aforementioned order, has additionally determined that any actions undertaken or claimed to have been undertaken based on the specified entries concerning the designated khasra numbers are rendered null and void ab initio, along with the imposition of costs on the petitioner amounting to ₹ 20,000/-. In conjunction with the aforementioned order, the Financial Commissioner Revenue has instructed the Forest Department to identify forest land similarly affected by encroachment and to report these findings to the respective Deputy Commissioners. Consequently, all Deputy Commissioners in the former State were mandated to facilitate the

eviction of illegal encroachments reported by the Forest Department from such lands, adhering to the appropriate procedures. Furthermore, the officers were instructed to solicit assistance from the Crime Branch of the J&K Police, to which the matter had previously been committed for investigation. The aforementioned order was known to the petitioners, and they have not challenged the same as yet.

37. The learned counsel for the respondents contends that, in the absence of a specific challenge to the aforementioned orders in both petitions, the arguments presented by the learned counsel for the petitioner fail to withstand legal scrutiny and should be dismissed; thus, the writ petition, lacking merit, warrants dismissal.

38. Finally, the learned counsel for the respondents asserts that the terminology employed in Government Order No. LB-6/C of 1958 explicitly stipulates that the land possessed by the beneficiary of LB-6/C must be continuously in cultivation from kharif 1957-58, in addition to meeting all conditions outlined in the aforementioned order. Since the predecessor-in-interest of the petitioner did not cultivate the specified land, he could not be designated as “tenants-at-will” and subsequently, as owners based on Government Order No. S-432 of 1966, issued June 3, 1966.

39. Consequently, as the error was first committed based on Government Order and consequently, the conferment of ownership rights under LB-6/C of 1958, based on the aforementioned Government order was also

unconstitutional; hence, the resulting mutations have been annulled. The arguments presented by the petitioner's counsel concerning the issuance of notice prior to the cancellation of the relevant mutation have been supported by the respondents' counsel, who has placed reliance upon the Supreme Court's ruling in "*Escorts Farms Ltd vs Commissioner, Kumaon Division, Nanital, UP & Ors*" in Appeal (Civil) No. 1584/1998, decided on February 20, 2004.

PERUSAL OF RECORD

40. During the proceedings, Mr Vishal Bharti, esteemed Deputy Advocate General, was requested to present the record to demonstrate to this Court the satisfaction documented by the Forest Department prior to commencing eviction proceedings against the petitioner, purportedly based on the order issued by the Financial Commissioner. Nevertheless, Mr. Bharti, the learned Deputy Attorney General, failed to satisfy this Court and did not present the record. He has subsequently produced the record, which this Court has reviewed, and contends that the action was taken based on the Financial Commissioner's order passed in the year 2015. The eviction proceedings commenced in 2021 pursuant to this order, to which he acknowledges the petitioner was not a party and was not afforded a hearing. Nonetheless, this order has been enforced to the petitioner's detriment, leading to the initiation of eviction proceedings against the petitioner, ultimately resulting in demolition.

REBUTTAL ARGUMENTS ON BEHALF OF THE PETITIONER

41. The learned counsel for the petitioner contends in rebuttal that the arguments presented by Mrs Kohli fall outside the parameters of the respondents' reply, in which they have conceded to all assertions made by the petitioner in WP(C) No. 435/2021 in paragraphs 4, 5, and 6. The respondents have submitted an evasive response, and having acknowledged the petitioner's position, they cannot justifiably claim that relief cannot be granted to the petitioner at this juncture. Mrs. Kohli's reliance on the aforementioned judgment by the Apex Court pertains to a distinct context, namely regarding "*the doctrine of superfluous formality*", indicating that even if notice had been issued, the outcome would have remained unchanged. Consequently, by employing the aforementioned doctrine, the Apex Court has issued its judgment, and the facts presented in this case are distinct, rendering the judgment cited by Mrs. Kohli inapplicable to the instant matter.

42. The learned counsel for the petitioner asserts that the petitioners have been deprived of their ownership rights, which were granted based on a mutation following the declaration of ownership by the previous owners of the land in question. Consequently, the rights vested in the petitioner cannot be revoked without adhering to due process of law or affording the petitioner an opportunity to be heard.

43. The learned counsel for the petitioner asserts that he has contested the derivative order issued by the Tehsildar, Jammu, which is the subject of

writ petition WP(C) No. 435/2021. Consequently, no additional amendments or facts could be introduced, as the petitioner has already challenged the subsequent order from the Tehsildar, Jammu, which is predicated on the aforementioned order, given that the Tehsildar's order is a direct result of the Collector's order. Consequently, there was no necessity to contest the aforementioned order afresh, as Mrs. Kohli has contended, as no new facts needed to be asserted through either amendment or the submission of a new writ petition. Consequently, the argument presented by Mrs. Kohli is legally untenable and should be dismissed.

44.Finally, the petitioner's counsel contends that the respondents were obligated to provide a copy of the relevant order when submitting their reply in WP(C) 435/2021. However, they intentionally concealed this critical information and failed to include the order in the record. The petitioner was never given a copy of the order, which only came to their attention upon the Forest Department's reply in the related petition, now included as Annexure R-5. Furthermore, the order was issued without any prior notice to the petitioner.

45.In his rebuttal, Mr. Bhushan cited Section 19-A of the Land Revenue Act, which indicates that a Revenue Officer may refer a case to a subordinate Revenue Officer for inquiry and report only if he possesses the authority to adjudicate under the Act, and may subsequently resolve the case based on the findings of such inquiry and report. The learned counsel asserts that

the Revenue Officer who issued the impugned order is not authorised to do so under the Land Revenue Act, and hence, the reliance put by Ms. Monika Kohli, learned Senior Counsel, is misplaced. The stand of the respondents on Section 19-A is erroneous and should be categorically dismissed.

46.Regarding the argument presented by the learned counsel for the respondents, asserting an alleged breach of the terms and conditions of LB-6/C of 1958 dated June 5, 1958, and the terms of Government Order S-432 of 1966, which served as the sole foundation for the Tehsildar's order, Mr. Bhushan contended that this ground is inapplicable to the petitioner's case. He acquired the land from the legal heirs of the deceased, Mohd Yaqoob. At this juncture, even if any wrongdoing has transpired, it is not attributable to the petitioner, who cannot be held accountable for any infractions that may have occurred at that time. He additionally asserts that during the intervening period, when individuals were designated as "tenant-at-will" based on LB-6, governmental action was necessitated in the event of any transgression; however, the conferment of proprietary rights in 1966 unequivocally demonstrates that no purported violation of the terms and conditions of LB-6 occurred. The argument presented by the respondents counsel about an alleged infringement of the aforementioned Government Order at this late date is unfounded and should be dismissed.

47.To substantiate his argument, learned counsel has referenced the judgment passed by a Co-ordinate Bench of this Court in **OWP No.982/2015** titled *“Mohd. Akbar Shah v. State of J&K & Ors,”* decided on 31.05.2016, indicates that the primary objective of granting ownership rights to individuals classified as "tenants-at-will" was to ensure that the benefits of the land were conferred upon the grantee, who was to utilize it solely for agricultural purposes and was prohibited from alienating it without governmental consent. It is indisputable that agricultural activity constituted the foundation of the State's economy in earlier times, and the land allocated for agricultural purposes to a state subject/domicile aimed to alleviate the hardships of that individual and their family, as well as to fulfill the objectives outlined in the aforementioned policy in LB-6. The Court, in its recent judgment, noted that agriculture is no longer the primary economic activity of the Union Territory. Consequently, the requirement for prior approval of the Government for the alienation of land designated for agricultural purposes, as stipulated in paragraph 4 of Government Order S-432 of 1966, has been rendered otiose and will not impede the landowner's right to alienate the property, provided that other statutory conditions for such alienation are satisfied. Based on the aforementioned principle, the argument presented by the respondents is legally untenable and should be dismissed.

48.Regarding respondents contention that the petitioner has not pursued the alternative and effective remedy stipulated by the statute regarding the

cancellation of the mutation, Mr. Bhushan cites the judgement of the Apex Court in “*Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors,*” reported in (1988) (8) SCC 1, which delineates exceptions permitting the direct filing of a writ petition without exhausting the alternative remedy, provided the petitioner’s case pertains to the enforcement of fundamental rights, a breach of natural justice, an order without jurisdiction or proceeding, or a challenge to the vires of an Act. Based on the aforementioned exceptions, the learned counsel asserts that the core of the petitioner's argument in this case is the infringement of the principle of natural justice, as the petitioner has been condemned without a hearing and has not been afforded the opportunity to contest the cancellation of the mutations, a fact that has already been acknowledged by the respondents. According to him, this is a suitable example in which the writ petition might have been filed directly, bypassing the alternative and effective remedy available under the statute against such an order. Furthermore, he contends that the entire proceedings initiated by the relevant Tehsildar or the Collector are void in the eyes of the law, as the petitioner has been condemned without a hearing, which constitutes a valid basis for directly approaching this Court through the present petition under Article 226 of the Constitution of India. Consequently, the doctrine of alternate and effective remedy will not apply in the context of the petitioner's case.

LEGAL ANALYSIS

49. Heard Learned Counsel for the parties at length and perused the record.

50. The issues involved in both writ petitions are analogous; therefore, the petitions have been clubbed and adjudicated collectively through a unified judgment.

51. In order to resolve the issue at hand, this Court finds it appropriate to establish the following questions of Law:

- a) Whether writ petition is maintainable despite the lack of a specific challenge to the order issued by the Collector, as the petitioner contests only a derivative order from the Tehsildar, Jammu, which references the Collector's order?*
- b) Whether Deputy Commissioner as well as Tehsildar lacks the administrative authority to revoke a mutation?*
- c) Whether the Deputy Commissioner, Jammu was competent to issue such order and could have resorted to Section 19(a) while getting the report from his subordinate officer, more particularly, when it was incumbent on part of the Collector to have invoked the powers only in the eventuality, if he was competent under law or empowered to do so by strict interpretation of the language used under Section 19(a) of the Land Revenue Act.*
- d) What was the actual significance of Order No. LB-6/C of 1958, dated June 5, 1958, published in the Government Gazette on June 19, 1958, followed by the conferment of proprietary rights under Government Order No. 432 of 1966, dated June 3, 1966.*

- e) Once ownership rights were granted under Government Order No. 432 of 1966 to the predecessor-in-interest of the petitioner, from whom the land was acquired, can the Government now, at this delayed juncture, contest the legality of the initial declaration of the occupants of State Land as tenants-at-will and the subsequent conferment of ownership rights, and is it possible to retroactively declare the entire process as illegal?*
- f) Can the Government, at this late juncture, after 62 years, annul the entire process and revoke the mutation when the petitioner acquired the land from Mohd Yaqoob, who has since passed away and was initially designated as a tenant-at-will, later granted ownership rights in 1966, upon which the Fard was issued and the Sale Deeds were registered based on those mutations?*
- g) It is questionable whether the respondents were warranted in rescinding the mutation at this late juncture, without contesting the Sale Deeds, which remain valid and have not been disputed by any aggrieved party. In the absence of any particular objection to the Sale Deeds, which are registered based on a Fard issued by the Revenue Department, what will be the effect of nullifying the mutation in favour of the petitioner?*
- h) Whether impugned order has been passed in violation of principles of natural justice?*
- i) After the petitioner has secured a 'No Objection Certificate' from all relevant authorities for the building of Grand Hill Restaurant, can the respondents, at this juncture, adopt a*

***contradictory position by asserting that the land in question
is under the jurisdiction of the Forest Department?***

52.A cursory examination of the record reveals that prior to the petitioner's acquisition of the land, the previous owners consulted the Revenue Authorities and received the Fard Intekhab, Jamabandi for Khasra No. 59/41, Khewat No. 17, and Khata No. 45. The relevant Patwari issued Fard Intkhab on 02.03.2000 and also provided "Titma Shajra." Since Mohd. Yaqoob possessed the land identified as khasra No. 59/41 located in Dawara, and the vendors are the legitimate heirs of Mohd Yaqoob. Upon reviewing the Fard Intkhab Jambandi, issued by the Revenue Authorities and certified by the Tehsildar Samba, it was determined that Noor Bibi, Arshad Bibi, and Moorad Ali are the lawful heirs of Mohd Yaqoob, in whose favour the Fard Intkhab has been issued by the Revenue Authorities. Subsequently, the petitioner acquired a parcel of land measuring 12 Kanal 7 Marlas through three distinct Sale Deeds, which remain unchallenged by any aggrieved party as of the present date. These deeds were duly registered by the competent authority, namely the Sub Registrar of Samba, on 08.03.2000, 05.02.2002, and 11.06.2004, respectively.

53.The records indicate that following the acquisition of the land by the petitioner through three distinct Sale Deeds referenced above, the petitioner was granted possession of the land by the previous owners. Mutations have been duly attested for the land measuring 12 kanals 7

Marlas, which includes Khasra No. 59/41, Khewat No. 17/17, and Khata No. 45/39 for **8 kanals**, as per the sale deed dated 05.02.2002 concerning **4 kanals** of land under Khasra No. 59/41 min, Khewat No. 17, Khata No. 45min, and the sale deed dated 11.06.2004 for **7 marlas** of land under Khasra No. 59/41, Khewat No. 10min, Khata No. 25min, located in Dawara Tehsil Samba.

54. The record indicates that the petitioner established a restaurant named “Grand Hill” on a section of land in 2012, having secured all necessary approvals from the relevant authorities, which the respondents have not contested. The remaining land has been enclosed with iron fencing, and the petitioner has been operating the business on the disputed land. The petitioner possesses proper authorisation and has secured an electrical connection to operate the aforementioned business.
55. The petitioner operated the aforementioned restaurant business for over nine years until the specified order was issued. The relevant authorities at that time granted permission for the said construction, issued by the BDO of the area after the petitioner obtained a “no objection” certificate from all concerned parties, leading to the inescapable conclusion that the respondents have no objection to the business activities conducted on the land owned and possessed by the petitioner. Respondent No. 4, prior to issuing the impugned order relevant to *WP(C) No. 435/2021*, failed to provide any notice or summons to the petitioner or the previous owners

from whom the petitioner acquired the land through duly registered Sale Deeds.

56.This issue has been explicitly asserted by the petitioner and remains unrefuted by the respondents. Conversely, the respondents' action of cancelling the mutations attested in favour of the petitioner in 2002 and 2004, as per the order dated 15.09.2020 issued by respondent No. 4 Tehsildar Jammu, has occurred after 18 years without notifying the petitioner or granting an opportunity for a hearing. This cancellation pertains to mutation No. 97 dated 16.05.2002, mutation No. 98 dated 16.05.2002, and mutation No. 105 dated 10.10.2004.

57.The aforementioned mutations were initially documented and recognised by the Revenue Authorities at the registration of the sale deeds, and based on these sale deeds, the land was transferred. Nonetheless, the Respondents initiated the cancellation of the mutation in 2020 after approximately 18 years, and did so without affording the petitioner an opportunity to be heard or issuance of a notice. The registered sale deeds are valid as of today and have not been contested by any aggrieved party or the Government; all requisite documentation was finalized at the time of the sale deeds without any objections raised. Consequently, the respondents should not have had any justification to modify or annul the mutation based on the contested order at this late juncture, 18 years later, without compelling reasons.

58. This Court perceives the cancellation of the mutation, as dictated by the impugned order, to constitute an arbitrary action by the respondents, which contradicts their prior acknowledgement, wherein no objections were raised by the Revenue Authorities during the registration of the sale deeds, thereby affirming the validity of the sale and the mutation. Consequently, this Court determines that the respondent's action, as per the impugned order to cancel the mutation, is unlawful, capricious, and infringes upon the petitioner's constitutional right to possess the property.

Finding on Questions of Law marked *supra* as “a”

- a) The writ petition is maintainable despite the absence of a specific challenge to the Collector's order, as it contests only a derivative order issued by the Tehsildar of Jammu, which references the Collector's order.*

59. The order challenged in this petition was issued by the relevant Tehsildar based on an administrative directive from the Deputy Commissioner of Jammu, a copy of which was intentionally withheld from the petitioner. Furthermore, the respondents have failed to include this document in their response to the current petition. The petitioner became aware of the issuance of the aforementioned order solely upon the filing of the Forest Department's reply in a similar petition, WP(C) No. 795/2022, as an annexure to the objections. The order issued by the Tehsildar is a derivative of the order issued by the Collector, which was needed to be communicated to the petitioner by the respondents. As the order issued by

the Collector was concealed by the respondents, the petitioner cannot be denied relief or placed at a disadvantageous position for failing to contest it. Consequently, this Court determines that the writ petition is maintainable despite the lack of a direct challenge to the order issued by the Collector, as the petitioner has contested a derivative order, namely the subsequent ruling by the Tehsildar, Jammu, which negatively impacts the petitioner's rights to retain the property in question, resulting in the cancellation of the mutations.

Consequently, question No. (a) is answered accordingly.

Findings on Question of Law marked supra as “b”

(b) Whether Deputy Commissioner as well as Tehsildar lack the administrative authority to revoke a mutations?

60. The primary concern is whether the Tehsildar possesses the competence to annul mutations or if such a determination necessitates a formal quasi-judicial procedure. If the legislation permits the Tehsildar to make determinations solely based on legal procedures or particular provisions within the act, then the cancellation of mutations solely by administrative directives by the Deputy Commissioner contravenes procedural fairness. Furthermore, the Tehsildar has exceeded the jurisdiction conferred by the J&K Land Revenue Act of 1939, as he possesses no power to annul or amend mutations solely based on administrative directives from a superior officer, namely, Deputy Commissioner of Jammu. The authority to annul a mutation or assess it necessitates a formal procedure, entailing legal

examination and a quasi-judicial decision-making process, which seems to be absent in the current instance. Consequently, it is evident that the Tehsildar has acted beyond the jurisdiction vested in him and has circumvented the legal due procedure. The impugned order dated 15.09.2020 was issued in contravention of the specific stipulations of the J&K Land Revenue Act, 1939. The order, which nullifies the mutations, explicitly states that it was issued by respondent no. 4, exclusively based on directives from respondent no. 3, the Deputy Commissioner of Jammu, as communicated in his order dated 14th September 2020. The Tehsildar lacked the authority under any provision of the J&K Land Revenue Act to issue an order rescinding the mutations, particularly when, acting solely on the administrative order of the Deputy Commissioner, Jammu, which was neither provided to the petitioner nor included in the respondent's reply to the current petition. Moreover, the Deputy Commissioner lacks the administrative authority to revoke a mutation, a matter that has been corroborated by a Coordinate Bench of this Court in the case named "*Om Prakash & ors.*" In the case of "*v. UT of J&K & Ors*" in WP(C) NO. 2360/2021, adjudicated on 20.03.2024, the following decision was rendered:

"12.The stand taken by the respondents is that respondent No. 2, Deputy Commissioner, Kathua has exercised his administrative powers. I am afraid, there is no such administrative power vested with the Deputy Commissioner that would give him jurisdiction to set aside the mutation orders passed by the Tehsildar. The power to attest a

mutation as also the power to set aside the mutation, is quasi judicial in nature. The said power can never be termed as an administrative power of the Revenue Officer. This power is to be exercised by the Revenue Officers strictly in accordance with the provisions contained in the J&K Land Revenue Act and that too after affording an opportunity of hearing to the affected party by adhering to the principles of natural justice. As has been already noted, even while reviewing its own order, a Revenue Officer has to give an opportunity of hearing to the affected party. The same is the position when Divisional Commissioner or Financial Commissioner exercises his revisional powers under Section 15 of the Act. A Revenue Officer is obliged to adhere to the principles of natural justice before setting at naught a mutation order attested in favour of a person.”

61. A cursory examination of an impugned order reveals that it was issued by the Tehsildar based on the directive from the Deputy Commissioner, exercising appellate authority under Section 11 of the J&K Land Revenue Act. It is noteworthy that the mutations in question have not been contested by any aggrieved party; hence, the Deputy Commissioner appears to have acted *suo moto* in this instance. Nonetheless, pursuant to Section 11 of the J&K Land Revenue Act, the Deputy Commissioner lacks the authority to act *suo moto*. For ease of reference, Section 11 of the J&K Land Revenue Act is reproduced below:

“[11. Appeals. — Save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue officer as follows, namely:—

- (a) *to the Collector when the order is made by an Assistant Collector of either class;*
- (b) *to the 2[Divisional Commissioner] when the order is made by a Collector;*
- (c) *to the Financial Commissioner when the order is made by a 2 [Divisional Commissioner];*

Provided that:-

- (1) *where an original order is confirmed on first appeal, no further appeal shall lie except on the grounds mentioned in clauses (a), (b) and (c) of sub-section (1) of section 100 of the Code of Civil Procedure, 1977;*
- (2) *where any such order is modified or reversed on appeal by the Collector, the order made by the 2[Divisional Commissioner] on further appeal, if any, to him shall be final;*
- (3) *the Government may especially empower an Assistant Collector of the first class to hear appeals against the orders of an Assistant Collector of the second Class.]”*

62. The aforementioned stance has been validated by a Coordinate Bench, which determined that the Deputy Commissioner lacks such authority under the provisions of the specified Act in the case titled "**Mohd Farooq & ors.**" *In the case "v. UT of J&K & Ors" in WP(C) No. 2571/2021, decided on 07.02.2023, the following was held:*

Similarly, even the power of revision is not available to the Deputy Commissioner. Section 15 of the Act confers the

powers of revision only on the Divisional Commissioner and the Financial Commissioner which powers can be exercised by the said Authorities either on an application by party aggrieved or suo motu. For ready reference, relevant extract of Section 15 of the Act is reproduced hereunder:

“15. Power to revise orders:

(1) The Financial Commissioner may at any time call for the record of any case pending before or disposed of by any Revenue Officer under his control;

(2) The Divisional Commissioner may call for the record of any case pending before or disposed of by any Revenue Officer subordinate to him;

(3) If in any case in which, the 4 [Divisional Commissioner] has called for a record he is of opinion that the proceedings taken or order made should be modified or revised he shall report case with his opinion thereon for the orders of the Financial Commissioner.

(4) The Financial Commissioner may, in any case called for by him under sub-section (1) or reported to him under sub-section (1) or reported to him under sub-section (3), pass such order as he thinks fit:

Provided that, he shall not under this section pass an order reversing or modifying any proceeding or order of a subordinate officer affecting any question of right between private persons without giving those persons an opportunity of being heard”

63. The Deputy Commissioner has not been vested with any revisional authority pursuant to Section 15 of the J&K Land Revenue Act, 1939. Section 15 of the Act confers revisional authority upon higher officials, namely the Financial Commissioner and Divisional Commissioner, under

certain conditions, allowing them to review and amend decisions made by subordinate authorities. The Deputy Commissioner is not explicitly endowed with the capacity to exercise revisional powers under this section. The differentiation between appellate and revisional powers is essential for comprehending the legal structure. The appellate powers, as delineated in Section 11 of the Act, permit a superior authority to examine decisions rendered by a subordinate authority, specifically in an appeal by a party dissatisfied.

64. Conversely, the revisional powers under Section 15 enable an authority to intervene in instances where an order may be erroneous, illegal, or unjust, irrespective of whether an appeal has been lodged. In this instance, the Deputy Commissioner has acted suo moto to annul the mutation order, which is not legally authorised. Nonetheless, the J&K Land Revenue Act does not contain any provision that explicitly confers upon the Deputy Commissioner the right to annul mutations certified by the competent body. This limitation period has been acknowledged in multiple judgements by this Court, which have determined that revisional power under Section 15 is reserved for higher authorities and cannot be exercised by the Deputy Commissioner in this context.

65. The Deputy Commissioner's action in this case lacks statutory authorisation under both Section 11 and Section 15, exceeding his jurisdiction and power. Thus, all actions stemming from the administrative decisions are legally null and void, as the Deputy Commissioner lacks the

competence to amend or rescind mutation. This stance has been reaffirmed by Coordinate Benches in previous rulings, further substantiating the lack of such powers conferred upon the Deputy Commissioner.

66. Consequently, this Court determines that the Deputy Commissioner lacked the authority to issue the administrative orders/instructions that underpin the actions taken by the relevant Tehsildar and are the subject of the present petition, despite the fact that the petitioner has not contested the order issued by the Deputy Commissioner Jammu.

67. The actions of respondent No. 4, based on the administrative directives of the Deputy Commissioner, to nullify the mutation orders validated in favour of the petitioner, plainly demonstrate his arbitrariness. Neither the Tehsildar nor the Collector possesses the authority to issue the impugned order revoking the mutations, therefore, the impugned order cannot withstand legal scrutiny and should be annulled.

Thus, the question No. “b” is accordingly answered.

Finding on Questions of Law marked *supra* as “c”

c. Whether the Deputy Commissioner, Jammu was competent to issue such order and could have resorted to Section 19(a) while getting the report from his subordinate officer, more particularly, when it was incumbent on part of the Collector to have invoked the powers only in the eventuality, if he was competent under law or empowered to do so by strict

***interpretation of the language used under Section
19(a) of the Land Revenue Act.***

68.The arguments of Mrs. Monika Kohli, learned Sr. AAG for the respondents that a report was called from Tehsildar, Jammu in conformity with the provisions of Section 19(A) of the Land Revenue Act, which provides that the Revenue Officer may refer a case which he is empowered to dispose of under the aforesaid Act to another Revenue Officer subordinate to him for enquiry and report and may decide the case upon such enquiry and report.

69.From a bare perusal of Section 19(A), it is apparently clear that such powers can be invoked by the Revenue Officer only in the eventuality if he is empowered to dispose of the case under the Act and admittedly in the instant case, the Deputy Commissioner was not empowered to dispose of the case, thus, any such report, which has been relied upon by the Revenue Officer has no legal backing and cannot be relied upon while taking action against the petitioner. Once the Revenue Officer was not competent to dispose of the case under the Act, then he is precluded from getting any report or enquiry from his subordinate officer. Thus, such *ex parte* report which has been relied upon by the Deputy Commissioner loses its significance and has no legal implication. Thus reliance placed by Mrs. Kohli, Section 19(A) of the aforesaid Act is misplaced and rejected.

Thus question No.(c) is answered accordingly.

Finding on Questions of Law marked supra as “d, e, f & g”

d). What was the actual significance of Order No. LB-6/C of 1958, dated June 5, 1958, published in the Government Gazette on June 19, 1958, followed by the conferment of proprietary rights under Government Order No. 432 of 1966, dated June 3, 1966.

e). Once ownership rights were granted to the predecessor-in-interest of the petitioner in accordance with Government Order No. 432 of 1966, can the Government now, at this late juncture, contest the legality of the initial declaration of the occupants of State Land as tenants-at-will and the subsequent conferment of ownership rights? Is it permissible to declare the entire process illegal at this delayed stage?

f.) Can the Government, at this late juncture, after 62 years, annul the entire process and revoke the mutation when the petitioner acquired the land from Mohd Yaqoob, who has since passed away and was initially designated as a tenant-at-will, later granted ownership rights in 1966, upon which the Fard was issued and the Sale Deeds were registered based on those mutations?

g.) It is questionable whether the respondents were warranted in rescinding the mutation at this late juncture, without contesting the Sale Deeds, which remain valid and have not been disputed by any aggrieved party. In the absence of any particular objection to the Sale Deeds, which are registered based on a Fard issued by the Revenue Department, what will be the effect of nullifying the mutation in favour of the petitioner?

70. Government Order No. LB-6/C of 1958, dated 05.06.1958, published in the Government Gazette on 21.06.1958, mandated that occupants of State land, including that vested in the State under the Big Landed Estates Abolition Act, 2007, and those from which ejectment was ordered under Council Order No. 40-C of 1944 but not executed by Kharif 1957-58, be designated as "tenants-at-will" (under the State) for the area they cultivated or occupied during Kharif 1957-58, subject to the following conditions:

1. *“(a) The occupant shall pay land revenue at-*

- (i) Rs.10 per kanal, where the land is an orchard, maliari land or a seed farm:*
- (ii) Rs.5/- per kanal, where the land is a plantation of trees other than fruit trees or is covered by a shop or other structure used for commercial purposes:*
- (iii) Rs.2.40 per kanal, where the land is covered by a residential building or is used for raising grass:*
- (iv) Village rates including cesses and other dues for the time being in force in case of land other than that mentioned in sub-clauses (i), (ii) and (iii).*

(b) The arrears of revenue as calculated under clause (a) shall be paid from the date of occupation subject to a maximum of fifteen years prior to Kharif 1957-58, provided that, the arrears for more than five years but less than ten years may be paid

in three and those for more than ten years in five equal annual installments;

(c) the occupants shall not-

(i) transfer the land or any interest therein; or

(ii) sub-let the land for more than two successive harvests or, with the permission in writing of a revenue officer not below the rank of a Tehsildar, for more than three years: or

(iii) where the land is used for growing paddy, maize or what crop, convert it into an orchard or plantation or otherwise render it unfit for the cultivation of such crops: or

(iv) fail to cultivate the land for more than one year or neglect to conform to standards of cultivation prevalent in the village.

Explanation:- The land covered by a “shop” or “structure for commercial purposes” or “residential building” shall be deemed to include the land appurtenant to such shop, structure or residential building.

2. Nothing contained in paragraph I shall apply to such land as is-

(i) Held by occupants, who do not reside or own any land in the village in which the land occupied is situate;

(ii) Recorded or used as path-way, grazing ground, graveyard, cremation ground camping ground,

khul (irrigation channel) or forest demarcated or otherwise including Berun line:

[1][xxxx]

(iii) *Held by any Government Department or institution under the control of the Government;*

(iv) *Situated on a hill slope and likely to be affected by erosion;*

(v) *Situated within the limits of a Municipality, [2][a town area] a Notified Area or a Cantonment or in areas to which rules for the grant of land for building purposes of other rules and orders in respect of Nazool lands for the time being in force extend;*

(vi) *Allotted to or left with the displaced persons under the provisions of Cabinet Order No. 578-C of 1954 dated 7th May, 1954;*

[3][(vii) *in excess of 100 kanals; or is held by occupants whose ownership or tenancy holding or both together with the area so occupied exceeds 100 kanals to the extent only of such excess;*

Provided that it is not laid with an orchard or that there are no permanent structure standing thereon.]

[4][(viii) *held by a displaced family or a person other than a displaced person, in excess of the Unit prescribed under Cabinet Order No. 578-C of 1954 dated 7th May, 1954;*

Provided that the land so cultivated was neither virigin nor was recorded as Banjar Quadim or ‘Ghair Mumkin’ during the last settlement and was not such at the time when it was broken.]

3. *No land of which the possession or occupation is sought to be regularized in accordance with these provisions shall be deemed to include trees of any description standing thereon but the occupants thereof shall be responsible for the preservation, maintenance, and upkeep of such trees.*

4. *A tenant-at-will who does not accept or who contravenes any of the conditions land in paragraph 1 and the [5] [transferee] or sub-lessee of such a tenant, shall be ejected and the land revenue calculated under clause (a) of paragraph 1 for the period of occupation shall, subject to a maximum of 15 years, be recorded for him”.*

71. Consequently, a cursory examination of the aforementioned order allows for the conclusion that the occupant of State land will be documented as tenant-at-will concerning the area under their cultivation or occupation in Kharif 1957 and 1958, contingent upon specific conditions previously stated, which granted them temporary rights for agricultural use of the land. The commendable aim of this classification was to enable the State to enhance land management and boost agricultural productivity, while retaining overarching control over the land. The government's initiative to promote agriculture granted temporary rights intended to incentivise

productive land usage rather than to reward or permanently enrich landholders.

72. The perusal of the said order outlines that certain lands as detailed in paragraph 2, are exempted from the advantageous stipulations of paragraph 1. Land owned by government departments or institutions under governmental authority is classified as one such group, as stated in clause (iii) of paragraph 2. These territories are exempted from the advantages outlined in paragraph 1 of the directive. Nonetheless, the petitioner contends that the defendants' actions stem from a misinterpretation of the advantageous stipulations outlined in the Government Order *supra*. The petitioner asserts that significant areas of land were allocated to the State in accordance with land reforms enacted by the Big Landed Estates Abolition Act of 1950. The objective of the aforementioned Government Order No. LB-6/C of 1958, dated June 5, 1958, issued by the Revenue and Rehabilitation Department, aimed to enhance agricultural activities in the State of Jammu and Kashmir during the late 1950s and early 1960s by bringing uncultivated "Banjar Quadim" and uncultivable "Gair Mumkin" State lands into cultivation to increase food production. Consequently, individuals in cultivating possession or occupation of such State lands during the Kharif season of 1957-58 were initially designated as tenants-at-will under the State at the first instance.

73. Nonetheless, the learned counsel for the petitioner asserts a specific position, which, although not pleaded in the writ petition, was presented

during the arguments and explicitly detailed in the brief synopsis provided to this Court. The petitioner contends that if the land in question is either virgin or classified as “Banjar Quadim or Gair Mumkin,” then the exclusion does not apply, and such land is encompassed within the advantageous provisions of paragraph one. The petitioner asserts that a cursory examination of the qualifying proviso alongside paragraph 2 of Government Order No. reveals... LB-6/C of 1958 indicates that the “Banjar Quadim and Gair Mumkin” lands are included in the advantageous stipulations of paragraph 1.

74. Conversely, the respondents in this case assert that “Banjar Quadim and Gair Mumkin” lands do not qualify for the beneficial provisions of paragraph 1.

75. Mr. Bhushan has adopted a definitive position regarding the qualifying proviso attached to the conclusion of paragraph two of Government Order No. LB-6/C of 1958, dated 05.06.1958, should be interpreted in conjunction with the exclusions outlined in clauses (1) to (viii) of paragraph 2, rather than with the primary paragraph 1. However, the respondents are erroneously associating the qualifying proviso with the main paragraph 1, resulting in unnecessary confusion and undermining the fundamental purpose of Government Order No. LB-6/C of 1958, dated June 5, 1958, and according to him, the accurate interpretation of the Government Order No. LB-6/C of 1958 is that the advantageous provisions of paragraph 1 shall apply regardless of whether the subject

property is classified as virgin or designated as “Banjar Quadim” or “Gair Mumkin.” Consequently, he asserts that the respondents' opposing interpretation—that the stipulations of paragraph one do not apply if the subject land is either virgin or designated as “Banjar Quadim or Gair Mumkin”—results from a misreading of the qualifying proviso in relation to the main paragraph one, rather than considering the various exclusions outlined in clauses (i) to (viii) of paragraph two of Government Order No. LB-6/C of 1958 is entirely aberrant.

76. A cursory examination of the order issued by the Deputy Commissioner of Jammu on 14.09.2020, which has not been contested by the petitioner in the current petition, indicates that the Deputy Commissioner based his decision on the report submitted by the Tehsildar of Jammu following a site investigation, which states that mutation No. 63 was attested under Government Order No. LB-6/C of 1958, mutation No. 64 certified by Government Order No. S-432 pertains to the land measuring 12 kanals and 7 marlas located in Village Dawara, Tehsil Jammu, under mutation Nos. 97 and 98 (Sale of land associated with mutation Nos. 64 and 122, attested under Government Order No. 254/C of 1965). Additionally, it includes land measuring 04 kanals under mutation No. 140 (attested under LB-6/C and S-432) for the land measuring 10 kanals in Village Dwara, which do not adhere to the fundamental and obligatory conditions stipulated in the Government Order. LB-6/C and S-432 are entirely erroneous and unlawful, warranting their annulment.

77. The Deputy Commissioner in the aforementioned ruling has additionally observed that according to the obligatory stipulations outlined in Government order No. LB-6/C of 1958, the occupier of the State Land must have been cultivating the land throughout the Kharif season of 1957. In the present case, according to the Deputy Commissioner and the investigation conducted by the Tehsildar, which the Deputy Commissioner relied upon, the land for which mutation has occurred was classified as “Banjar Quadim and Gair Mumkin Banna” in Kharif 1957, and the entries recorded in the jamabandi of 1997-98 designated the subject land as “Gair Mumkin Jarh.” The Deputy Commissioner opined that the recipient, having not cultivated the property throughout the critical crop period, was consequently ineligible to be designated as a tenant-at-will under the State for the specified land. In this perspective, the contested mutation No. 63 of the village recorded and verified by Government Order No. LB-6/C is entirely unlawful and erroneous *ab initio* and has been annulled.

78. The Deputy Commissioner opined that Mohd Yaqoob, the purported recipient, was not entitled to any preliminary benefits under Government Order No. LB-6/C, procedures for conferring ownership rights over the specified land under government authority. Accordingly, Mutation No. 64 of S-432 was deemed equally unjust and fraudulent; hence, the Deputy Commissioner concluded that it failed to meet legal standards from any perspective, leading to its annulment. Nonetheless, mutation No. 97

pertaining to the sale of 4 kanals of land from khasra No. 59/41, executed by Murad Ali, a shareholder, in favour of Abdul Hamid, remains valid. The aforementioned mutation No. 98, pertaining to the sale of 8 kanals of land executed by Noor Bibi and Arshed Bibi, daughters of Mohd Yaqoob, in favour of Abdul Hamid, was likewise unlawful. The Deputy Commissioner, exercising appellate authority under Section 11 of the Land Revenue Act 1996, approved the reference submitted by the Tehsildar, Jammu, and annulled mutations Nos. 63, 64, 97, 98, 122, and 140, concerning land measuring 26 kanal and 7 marlas under Khasra No. 59/41 in Village Dwara, Tehsil Jammu. The Tehsildar was instructed to amend the pertinent record, and upon the issuance of this order, the petitioner contested it. However, this Court must not overlook the fact that Government Order No. LB-6/C of 1958, dated June 5, 1958, was succeeded by another directive, namely Government Order No. S-432 of 1966, dated 03.06.1966, issued by the Revenue Department in accordance with Council Decision No. 916 of 04.04.1966, mandates the conferment of proprietary rights to cultivators of State lands who are permanent residents and have been designated as tenants-at-will per Government Order No. LB-6/C of 1958, contingent upon the stipulations that:

- ***Land is held by them in self cultivation continuously from Kharif 1957-58;***
- ***The areas of the land given on proprietary rights should not exceed two acres of Abi and four acres of Khushki in Kashmir Province including the District of Ladakh and four acres of Abi or 6 acres of Khushi in the Jammu***

Province, in both cases including the land already held in ownership rights;

- *No right should be conferred in respect of land entered in records or used as Kahcharai or for any common purpose or orchard, tree plantations, shop sites, land under structures used for commercial purposes and residential buildings;*
- *The grantee shall use it for agricultural purposes only and shall not be entitled to alienate it without the previous permission of the Government;*
- *The grantee shall be liable to pay the land revenue including cesses and other dues as provided for in the orders by which they are declared as tenants-at-will.*

79. Upon a cursory examination of Government Order LB-6/C of 58, dated 05.06.1958, indicates that specific land mentioned in paragraph 2 has been omitted from the advantageous stipulations of paragraph 1. The proviso, which has caused confusion regarding the cultivated land, must be interpreted in conjunction with exclusion clause [4](viii) rather than with clause (1), as asserted by the respondents in their reply affidavit. The exclusion clauses are detailed in the aforementioned order from (i) to [4](viii) of Para 2, stipulating that nothing contained in para shall apply to such land as held by displaced family or individuals other than displaced persons in excess of the unit specified in Cabinet Order No. 578-C of 1954, dated 07.05.1954. Additionally, there are other exclusion clauses with a specific proviso that must be interpreted in conjunction with [4](viii), which states that the cultivated land was neither virgin nor

classified as “Banjar Quadim or Ghair Mumkin” during the last settlement and was not such at the time of its cultivation. For facility of reference the proviso reads as:

“Provided that the land so cultivated was neither virgin nor was recorded as Banjar Quadim OR ‘Gair Mumkin’ during the last settlement and was not such at the time when it was broken ”

80. Consequently, the accurate interpretation of Government Order No. LB-6/C of 58 dated 05.06.1958 stipulates that the aforementioned proviso should be interpreted in conjunction with exclusion clause [4](viii), rather than independently with paragraph 1, as erroneously asserted by the respondents. The respondents' interpretation, as represented in the Deputy Commissioner's ruling, contradicts both the meaning and the spirit of the policy established in the aforementioned Government ruling. As per the directive, individuals in possession of State land, encompassing land allocated to the State under the Big Landed Estates Abolition Act of 2007, and land from which ejectment was mandated under Council Order 40-C of 1944 but not executed until Kharif 1957-58, were to be documented as tenants-at-will (under the State) for the area they occupied during Kharif 1957-58, contingent upon specific conditions.

81. It is not a case of the respondents that the case of the petitioner falls in the exclusion clauses 2 and 4(viii), being a displaced family or a person otherwise other than a displaced person have excess of unit prescribed under Cabinet Order No. 578-C of 1954, dated May 7, 1954 to which the

aforementioned proviso regarding land cultivated as "Virgin, Banjar Quadim or Ghair Mumkin" is applicable, rendering the respondents' interpretation inconsistent with the LB-6/C of 1958.

82. Therefore, this Court unequivocally asserts that the cultivation of "Banjar Quadim or Ghair Mumkin" land, based on the aforementioned order, shall be recognised as tenant-at-will for the area under their cultivation or occupation during Kharif 1957-58.

83. This proviso prohibits or excludes specific lands from being regularised or granted rights over them. It pertains primarily to land exceeding the limits established by Cabinet Order No. 578-C of 1954. It applies to:

"Displaced families, mostly from Partition or resettlement due to various circumstances, and non-displaced individuals, including standard landholders or occupants, cannot assert regular rights over excess land, regardless of ownership. designated as "virgin land" (previously uncultivated), categorised as "Banjar Quadim" (permanently barren for an extended period), or identified as "Ghair Mumkin" (uncultivable—such as rocky terrain, roads, streams, etc.), either at the time of the most recent official land settlement or when the land was initially cultivated ("broken")."

84. Thus, it can safely be concluded that the case of the petitioner falls within the ambit of the terms and conditions of the aforesaid order issued in 1958 and the exclusion clause (2) was not applicable to the predecessor-in-interest of the petitioner and rightly so, the benefit has been given to the petitioner on the strength of the valid sale deeds which are intact as on

date. The declaration of Mohd Yaqoob and other members of his family as tenant-at-will in 1958 leads to an irresistible conclusion that they fulfilled all the terms and conditions of **LB6/C of 1958** and rightly so they were conferred proprietary rights thereafter on the strength of Government Order No. 432 of 1966 dated 03.06.1966 being permanent residence of the state. Thus, this Court is of the opinion that once a substantive and independent right which emanates from Government Order No. LB6/C and is independent only upon the satisfaction of the conditions set out in the order itself.

85. Thus, LB6/C does not extinguish the ownership of the state over the land in occupation of a person who becomes tenant-at-will after satisfying the requisite conditions. Attestation of mutation would be of no consequence so far as his right accrued under LB6/C is concerned.

86. The occupant of the state land after being recorded as tenant-at-will has become entitled to the ownership rights over such land under Government Order No. 432 of 1966 which confer substantive right upon the occupant of the said land. Had there been any infraction of the terms and conditions of LB6/C then there was no occasion for the Government to have given any benefit to them under 1966 Order.

87. Thus, it can safely be concluded that all the conditions of both the orders were complied with and rightly so the ownership rights were conferred on Mohd. Yaqoob and his family members which later on have dwelled over

the petitioner on the basis of valid sale deeds. Those substantive rights cannot be taken away without away following due process of law or without providing an opportunity of being heard to the petitioner.

88. Under what circumstances did the concerned Tehsildar conduct a one sided inquiry on 12.09.2020, i.e., 62 years later, resulting in a report indicating that the beneficiary had not cultivated the land during the critical cropping period and thus was not recognized as a tenant-at-will for the land? This inquiry occurred despite significant developments from 1958 to 2020, when proprietary rights were granted to the petitioner based on Government Order No. S-432 of 66 dated 03.06.1966, which confirmed that the “tenants-at-will” were the cultivators of the land and permanent residents of the State. Once proprietary rights have been granted to the cultivators of State land, the Government cannot, after 62 years, reverse this decision by asserting that benefits under LB-6/C cannot be conferred due to the beneficiary's lack of cultivation, especially when proprietary rights have already been established for the predecessor-in-interest of the petitioner. The Government, after maintaining a prolonged silence for 62 years, has emerged from its inertia and adopted a position that **astonishes the Court’s conscience**, which is impermissible under the law and contradicts the established record.

89. The proprietary rights were to be granted exclusively to the permanent residents of the State, contingent upon their designation as tenants-at-will according to Government Order No. LB-6/C of 58, contingent upon

certain requirements outlined in the aforementioned order, was under cultivation, and no objections were submitted by the respondents throughout the intervening period, when the land's cultivators were tenants-at-will from 1958 to 1966.

90. The respondents, having relinquished their rights to raise objections during the intervening period regarding the status of the cultivators as tenants-at-will, are legally precluded from contesting the status of the petitioner's predecessor-in-interest after 62 years, when proprietary rights were granted to the cultivators of State land, who are permanent residents, following their designation as tenants-at-will, contingent upon the fulfillment of the conditions outlined in the aforementioned order or upon the conferment of proprietary rights to the cultivators of State land, it can be inferred that these rights are contingent upon the fulfillment of the requirements outlined in Government Order No. Under S-432 of 66, after proprietary rights have been given, the Government cannot, under any circumstances, alter the status of the petitioner who acquired the aforementioned land from the lawful heirs of Mohd Yaqoob.

91. Consequently, it can safely be concluded that the petitioner possessed full authority over the aforementioned land, which was conveyed to him in accordance with Government Order *supra*. The sale deed, executed in favour of the petitioner has not been contested by any aggrieved party to date. Regarding Government Order No. S-432 of 66, dated 03.06.1966, stipulated that proprietary rights be granted to cultivators of State lands

who are permanent inhabitants and have been officially recognised as tenants-at-till per Government Order No. LB-6/C of 58 is contingent upon several restrictions, including that the property is to be utilised solely for agricultural purposes and that the grantee is prohibited from transferring it without prior consent from the Government.

92.The requirement of obtaining prior governmental consent for the alienation of land, for which ownership rights were granted by the Government to an individual who held the land as a tenant under the State, was instituted to guarantee that the advantages of the land are realised by the grantee and utilised for agricultural purposes.

93.Historically, agricultural activities constituted the foundation of the State's economy. The land allocated for agricultural uses to a State subject was intended to alleviate the hardships of that individual and their family. The times have now changed. Agricultural activity is no longer the primary economic endeavour of the State. The requirement to obtain prior governmental permission for the alienation of land designated for agricultural purposes, as stipulated in paragraph 04 of the 1966 order, is deemed “**rendered otiose**” and will not impede the landowner's right to alienate the property, provided that other statutory prerequisites for such alienation are satisfied.

94.Consequently, this Court believes that the land cultivator, specifically the predecessor-in-interest of the petitioner, obtained full dominion over the property granted to him pursuant to the 1966 Order, and both the 1958 and

1966 Orders were enacted under the J&K Land Revenue Act. Upon the conferral of proprietary rights over the land to the petitioner's predecessor-in-interest pursuant to the Order of 1966, the prior order LB-6/C of 1958 became obsolete. The rights will subsequently be governed by the Transfer of Property Act, the Land Alienation Act, and the Agrarian Reforms Act. Once, absolute ownership of the land is attained, restrictions on its alienation cannot be imposed. As the requirement for prior governmental approval for the alienation of the land designated for agricultural purposes has become superfluous, it will not affect the owner's right to alienate the land, provided that other statutory conditions for such alienation are met.

95. Consequently, based on the legal precedent established by a Coordinate Bench of this Court in the analogous case of ***“Mohammad Akbar Shah & Ors vs State & Ors” in OWP No. 982/2015***, decided on 31.05.2016, the Sale Deeds were executed by the competent Court, facilitating the transfer of land from the predecessor-in-interest to the legal heirs and subsequently to the petitioner. The essential portion of the aforementioned judgement is copied as follows:-

***“12. It appears that the condition of seeking previous permission from the Government for alienation of land, in respect of which, ownership rights were conferred by the Government as the person was holding the land as tenant under the State, was done with the purpose to ensure that the benefit of land accrues to the grantee and he uses it for agriculture purposes.*”**

13. In earlier times, agriculture activity was the backbone of economy of the State. The land, which was given for agriculture purposes to a State subject, was to ameliorate the sufferings of such person/his family. Now the times have changed. The agriculture activity is no more the main economic activity of the State. The condition of seeking previous permission of the Government for alienation of land, which was given for agriculture purposes, in terms of paragraph 04 of the order of 1966, is rendered otiose and will not effect right of the owner of land to alienate the same provided other statutory requirements are fulfilled for such alienation.”

96.The judgment mentioned supra holding condition no. 4 of Government order No. 432 of 1966 dated 03.06.1966 is a judgment in rem and have to be implemented by all the concerned which includes the present Tehsildar also and any deviation would be contemptuous and tantamount to acting in derogation to the mandate and spirit of the law laid down in the aforesaid judgment which has been reiterated by this Court in WP(C) No. 3249/2023 decided on 13.03.2024 in case titled “Puran Chand & Ors vs. UT of J and K & Ors.” and in case titled “Angrez Sigh vs. UT of J and K and Ors.” decided on 3rd July, 2023 in WP(C) 1657/2023.

97.Consequently, in light of the above discussion, the interpretation applied by the respondents in cancelling the mutation contradicts the mandate and intent of the policy established by the Government in Order No. LB-6/C

of 58, in conjunction with Government Order of 1966, fails to withstand legal scrutiny and is subject to annulment.

Consequently, question Nos. c, d, e, f are answered.

Finding on question of law marked supra as “h”

h.) Whether impugned order has been passed in violation of principles of natural justice?

98.To address questions No “h”, this Court emphasises that a fundamental tenet of natural justice is the right to be heard, embodied in the principle of "audi alteram partem." In any judicial procedure that affects an individual's rights, appropriate notice must be given to ensure the individual has the opportunity to submit their position. In a scenario when mutations have been annulled and the petitioner's rights are infringed, it contravenes the tenets of natural justice. It would be unjust and legally prohibited to strip an individual of their property rights without granting them the chance to challenge the decision. The sale deeds and Fard are crucial documents that establish the petitioner's entitlement to the property. Consequently, the respondents' decision to annul the mutations after 18 years, without adequate investigation, notice, or justification, constitutes an inherent contradiction that undermines the petitioners' vested rights.

99.The Government was expected to provide a formal notice to the petitioner prior to issuing any unfavourable order, constituting the minimum

procedural safeguard. The failure to issue such notice contravenes the concept of fairness, which necessitates that an individual be informed of any forthcoming action that may impact their legal rights and be have the opportunity to respond. Consequently, the contested order dated 15.09.2020, which annulled mutation Nos. 97, 98, and 105 issued by respondent no. 4, Tehsildar, without notifying the petitioner, warrants annulment.

100. Due to the lack of notification and the illegal annulment of the aforementioned mutations, the Court is obligated to censure the Government's actions for neglecting procedural fairness and due process. This Court determines that the mutations confirmed in favour of the petitioner by the competent authority regarding the land purchased from Mohd Yaqoob and his legal heirs cannot be revoked after 18 years without affording the petitioner an opportunity to be heard or issuing a notice, particularly given that ownership was granted to Mohd Yaqoob in 1962 under the policy established by Government Order No. 432 of 1966 dated 03.06.1966, based on the declaration of the petitioner's occupation of the land as "tenant-at-will" pursuant to the Order No. LB-6/C of 1958, dated June 5, 1958.

Thus the question No "g" is accordingly, answered.

Finding on question of law marked supra as "i"

i. Once the petitioner has obtained 'No Objection Certificate' from all the respective departments for raising construction of Grand Hill Restaurant whether the respondents, at this stage, can take a contradictory stand by projecting that the land in question belongs to the Forest Department.

101. With a view to answer the aforesaid question, it would be apt to reproduce the stand which has not been controverted by the respondents while filing the reply or at the time of arguments by the Forest Department.

102. I have gone through the order passed by the Financial Commissioner (Rev) dated 10.03.2015, which has been made basis by the Forest Department to initiate eviction proceedings against the petitioner, a perusal whereof reveals that the petitioner was not a party to the *lis* before the Financial Commissioner. Thus, this Court is of the view that the said order cannot be made applicable to the petitioner. Even the said order is based upon wrong understanding of the Government Order No. LB-6/C of 58 which has already been clarified by this Court *supra*. The respondents have not denied that joint demarcation (*nishandehi*) has been carried out but the respondents have disputed the same as the said report was not signed by any Forest officials. However, from a bare perusal of communication dated 23.02.2017, which has been placed on record as Annexure-R-2 with the objections filed by the Forest Department in the instant petition shows that the respondents have admitted the correctness

of the jointly agreed map, which has been referred as a Annexure to the said communication, though, the respondents have deliberately not attached the said jointly agreed map with the aforesaid communication.

103. The correct understanding of the Government Order No., LB-6/C of 1958 has already been discussed by the Hon'ble Division Bench of this Court in *"Kewal Krishan vs State of J&K & Ors"*, (LPAOW No. 8/2000), reported as 2004(II) SLJ, 617, decided on 15.04.2004, wherein it has been held as under:

"6 From the bare reading of the above quoted order it is manifest that this Govt.order confers a right upon an occupant of State land on the relevant time to be recorded as 'tenant-at-will' subject to his satisfying the conditions prescribed in Govt.Order itself. As a necessary consequence of such status conferred upon such occupant he had to pay the arrears of revenue and rent therefore mutations were being attested under the provisions of Land Revenue Act. Then the Government of Jammu & Kashmir issued Govt. order No. 432 of 1966 dated 3.6.1966 providing for conferment of proprietary rights on the cultivators of the State lands who were permanent residents of the State and stood declared as 'tenants-at-will' in terms of Govt.order No. LB-6.

8. The question arising for our consideration is whether the right conferrable under Government order Lb/6 is dependent on attestation of a mutation in this regard and for that matter can the non-attestation of a mutation of tennat-at-will be regarded as an impediment for conferment of proprietary rights of Govt.order No. 432 on an occupant of State land who is otherwise entitled to be recorded as tenant-at-will under Govt.order No. Lb-6.

9. In our considered opinion right to be recorded as 'tenant-at-will' is a substantive and independent right which emanates from Govt.order No. Lb-6 and is independent on;y upon the satisfaction of the conditions set out in the order itself. LB-6 does not extinguish the ownership of the State over the land in occupation of person who becomes 'tenant-at-will' after satisfying the

requisite conditions. Mutation or no mutation would be of no consequence so far as this right accrued under LB/6 is concerned.

10. The occupant of a State land after being recorded as tenant at will has become entitled to the ownership rights over such land under Govt.order Section 432. Both of the Government orders i.e.LB/6 and Section 432 have not been rescinded still a cloud is being cast on so conferred rights by the Govt.order No. 158 of 1989 dated 22.6.1989 which reads as follows:-

"Government order No. 158 of 1989.

Dated 22.6.1989.

It is hereby ordered that no mutation under Government order No. LB-6/C of 1958 dated 5.6.1958 and Section 432 of 1966 dated 3-6-1966 in respect of the land to which these were applicant shall be attested hence forth.

By order of the Government of Jammu & Kashmir."

11. Could such a ban as envisaged by the Government order be legally imposed by the Government? In our considered opinion the ban order is bad in law being an arbitrary exercise of the power. The mutations to be attested pursuant to Government orders LB/6 and Section 432 are in the nature of recognition of vested rights in favour of the person entitled to be recorded as tenant-at-will and owner under the said Government orders. Though the rights emanating from the said Government orders are not dependent upon the attestation of mutations yet the ban order arbitrarily without any lawful reason causes unreasonable and irrational restriction upon the recognition of already vested rights. So long as these Government orders which confer substantive rights upon the occupants of State lands are in force, no restriction can be imposed upon the recognition of such rights by imposing a ban upon the attestation of mutations. No reason for necessitating such ban on the attestation of mutation has been brought to our notice by the learned Deputy Advocate General nor any is discernable from the language of the Government

order. We, therefore, quash the same for the reason of its being arbitrary. Consequently we set aside the order dated 21.8.1993 passed by learned Director Land Records (Settlement Officer) in appeal No. 46/DLR/AP/92-93 with a direction to him for passing fresh order in accordance with law after hearing the parties. The judgment passed by the learned Single Judge is also set aside and writ petition is allowed

104. From a bare perusal of the aforesaid order and the interpretation drawn by Division Bench of this Court, the Court is of the view that the right to be recorded as a 'tenant-at-will' under Government Order LB-6 of 1958 is a substantive and independent right, not contingent upon the attestation of mutation, and that such a right, once accrued upon fulfillment of the conditions attached to said order, entitles the occupant to proprietary rights under Government Order No. 432 of 1966. Both these government orders remain in force and confer vested rights which cannot be arbitrarily curtailed. The imposition of a ban on mutation attestation through Government Order No. 158 of 1989 was deemed arbitrary and legally unsustainable, as it imposed an unreasonable restriction on the recognition of these rights without justification. Consequently, the court quashed the 1989 order, set aside the decision dated 21.8.1993 issued by the Director Land Records, and remanded the case for fresh adjudication, also allowing the writ petition by setting aside the earlier judgment of the learned Single Judge.

105. From a careful perusal of the said jointly agreed map shows that same is not in any way different from joint demarcation (*nishandehi*)

report dated 15.02.2017 and the other map forming part of the said demarcation report dated 15.02.2017. Both the maps lead to an irresistible conclusion that the subject land measuring 12 kanals falling under Khasra No. 59/41 of village Dwara, Tehsil Jammu are exactly the same. Thus, the stand taken by the respondents regarding joint demarcation report dated 15.02.2017 is contrary to their own admission regarding the correctness of the jointly agreed map in their own communication dated 23.02.2017, which has been placed as annexure along with objections. Even the reply given under RTI dated 17.06.2015 vindicates the stands of the petitioner

that there is no encroachment on any forest land in village Dawara, Tehsil and District Jammu.

106. There is no specific mention of Compartment No. 65/Ch of Bahu Forest Block in the said reply which was subject matter of show cause notice and RTI reply given by PIO/DFO. From a bare perusal of the stand taken by the respondents in their objections in the instant petition, the respondents have taken a stand by placing reliance on some communication dated 17.10.2016 addressed by State Vigilance Commission to Chief Secretary, which has nothing to do with the subject matter land measuring 12 kanals falling under Khasra No. 59/41 of Village Dawara, Tehsil Jammu.

107. This Court after examining the original record which has been supplied by Mr. Vishal Bharti indicates that khasra No. 59/41 is very large

in size and comprises of total 2206 kanals and 7 marlas (339K 06M State land +1854K 14 M Forest land+12K 7M ownership land) which is clear from joint demarcation (*nishandehi*) report dated 15.02.2017 and therefore the alleged encroachment on 374 Kanals Forest land (out of 1854K 14M) falling under this Khasra has nothing to do with the distinct and separate ownership land measuring 12 Kanals which is the subject matter of the present writ petition.

WP (C) No. 795 of 2022

108. The petitioner in WP (C) No. 795 of 2022 contests the Forest Department's actions, which are purportedly based on a 2015 order issued by the Financial Commissioner. The Forest Department initiated eviction proceedings against the petitioner based on this order, in which the petitioner was not a party and the same was not applicable to the petitioner. The respondents commenced eviction proceedings in 2021, seven years after the issuance of the aforementioned order, in which the petitioner was neither a party nor afforded an opportunity to be heard. The pertinent questions of law for consideration in the present petition are:

A. It is questioned whether the Forest Department was warranted in commencing eviction proceedings based on the order issued by the Financial Commissioner, which merely referenced the land acquired by the petitioner through a legitimate and valid Sale Deed.

B. The Forest Department, having undertaken demarcation in the presence of the Revenue Department, acknowledges on record that the petitioner has not encroached into any forest land. Under what conditions has the Forest Department initiated unlawful eviction procedures against the petitioner in the specified demarcated land, absent any justification?

C. Can the actions of the Forest Department be deemed rational for such demolition, given that they are signatories to the demarcation report, which acknowledges that the petitioner has not encroached upon any portion of the Forest Department's land or State land?

109. The petitioner asserts that the purported eviction order dated 02.03.2022 was neither served to them nor included in the record with objections. Furthermore, respondent No. 2 unlawfully entered the petitioner's property on 27.03.2022, a Sunday, accompanied by a team of officers and police, and illegally demolished the existing structures without following the proper legal procedures, which constitutes a clear abuse of authority.

110. The circumstances under which the Forest Department has reached a subjective conclusion regarding the petitioner's encroachment on forest land are not evident from the records, and this particular query was raised by this Court to Mr. Vishal Bharti, learned Deputy Advocate General and he was instructed to present the original record to ascertain whether the Forest Department has drawn any satisfaction in this matter. However, the Learned Deputy Advocate General could not produce any record, to this effect, to substantiate this position as to whether the petitioner was heard

by the Financial Commissioner in 2015 or if any notice was issued to the petitioner. The learned counsel was unable to provide a satisfactory explanation regarding the initiation of eviction proceedings by the Forest Department against the petitioner, and the record which has been submitted to this Court by Mr. Bharti do not substantiate and justify the stand of the Forest Department.

111. In relation to the eviction proceedings, the respondent, the Forest Department, commenced the demolition of the disputed building on Sunday, despite the petitioner having expressed a willingness to participate in any demarcation process should the Forest Department have concerns regarding the land in question. Instead of permitting the petitioner to engage in the demarcation, the Forest Department proceeded with the demolition, resulting in the petitioner estimating a loss of approximately **76,40,200 (rupees seventy six lacs, forty thousand and two hundred)**. However, in accordance with the interim order passed by this Court, the respondents have been prohibited from proceeding with further demolition. For ease of reference, the interim order issued by this Court is reproduced as follows:

“The short grievance projected by the petitioner in this petition is that respondent No.4 has cancelled the mutation Nos. 97, 98 and 105 on the asking of the Deputy Commissioner, Jammu without even affording an opportunity of being heard to the petitioner. It is submitted that the aforesaid mutations have been attested

in pursuance to the sale deed duly executed by the owners in favour of the petitioner.

Issue notice to Mr. S S Nanda, learned Sr. AAG for 10th March, 2021.

Till then, there shall be status quo with regard to the properties covered by the impugned mutations.

List on 10th March, 2021.

Copy of the order be supplied to the petitioner under the seal and signatures of the Bench Secretary.”

112. Once there is admission on part of respondents in the joint demarcation that the petitioner has not encroached any forest land, then under what circumstances, the respondents have initiated the eviction proceedings against the petitioner, is not forthcoming from the record

113. Consequently, the entire eviction proceedings, stemming from the order issued by the Financial Commissioner (Rev) on 10.03.2015, in which the petitioner was not involved, are legally null and void ab initio and cannot be enforced.

114. In countering the respondent's assertion that the petitioner neglected to pursue the alternative remedy stipulated by the statute concerning the annulment of mutations or the submission of an appeal under sub-section 3 of Section 79-A of the Indian Forest Act, the petitioner has referenced the principles delineated in “*Whirlpool Corporation v. Registrar of Trademarks, Mumbai & Ors.*”, reported as 1998(8) SCC (1), a seminal ruling, wherein, the Hon’ble Supreme Court has carved out certain exceptions to the doctrine of exhausting alternative remedies. The ruling

underscores that in instances of fundamental rights infringement, breaches of natural justice, or where an authority exceeds its jurisdiction, a writ petition to the Court may be allowed despite not seeking an alternative remedy.

115. The Hon'ble Apex Court in Whirlpool Corporation (above) emphasised that the notion of exhausting alternative remedies is a common rule in administrative law, but it is not absolute. Numerous clearly delineated exceptions exist. This include scenarios where the action or decision infringes against the individual's fundamental rights, where there is a violation of natural justice principles (such as the denial of a fair hearing), or where the authority has exceeded jurisdiction to issue the order. Furthermore, if a statutory provision or action is contested based on Constitutional or legal infirmity, the affected party may have the right to immediately petition the Court by-passing the alternative remedy.

116. The petitioner asserts that the basis of the petition is grounded in the infringement of natural justice principles. The petitioner asserts that the annulment of the mutation occurred without affording him the chance to present his case, a principle essential to natural justice. The respondents admit the denial of opportunity to the petitioner to oppose the cancellation of the mutations, so constituting a clear violation of procedural fairness.

117. Moreover, the petitioner contends that this circumstance, in which a decision is rendered without providing a fair hearing, unequivocally aligns with the exceptions established in "Whirlpool Corporation" (*supra*). The

petitioner contends that the infringement of his right to a fair hearing is so egregious that it warrants a direct writ to the Court, circumventing the usual statutory remedy mandated by law. The petitioner asserts that no effective remedy would have been accessible via the statutory process due to the intrinsic nature of the violation of natural justice.

118. The Court concurs with the petitioner's assertion and determines that the instant case falls within the exceptions carved out in "Whirlpool Corporation" (*supra*).

119. The Court recognises that a breach of natural justice principles, especially where a party is denied a fair opportunity to state their case, warrants a direct writ to this Court. Likewise, if the authority's decision is rendered without jurisdiction or its legality is disputed, a direct petition may be considered and is permissible.

120. Consequently, the Court determines that the petition is admissible without the necessity of first seeking the alternative remedy stipulated by the legislation. This approach aligns with the exceptions, wherein access to the Court is not precluded solely owing to the non-exhaustion of alternative remedies, particularly when significant questions over fairness and justice in the administrative procedures arise.

121. Coming back to the facts of the present case, once the petitioner has addressed the show-cause notice issued by the Forest Department, how can the respondents proceed with the demolition of the structure without

awaiting the resolution, particularly when, the petitioner has provided a report and offered to undergo a new demarcation.

122. The petitioner had previously responded to the show-cause notice; therefore, the authorities were required to defer any further action pending the resolution of the proceedings. The authorities are legally prohibited from proceeding with demolition while the petitioner's response to the show-cause notice remains pending and under review. The petitioner's prior response to the show-cause notice signifies that the procedure was in progress, and the expedited demolition, particularly on a Sunday, has compromised the principles of fairness and procedural protections.

123. The Forest Department should have adhered to the idea of due process, which entails providing the petitioner a fair opportunity to submit his case and awaiting a resolution. Commencing demolition prior to the resolution is illegal and contravenes principles of natural justice. The petitioner's prior willingness to undergo a new demarcation is a noteworthy consideration. This action indicates that the parties concerned were diligently striving to resolve any disagreements. The initiation of demolition prior to the resolution of the show-cause notice infringed against the petitioner's right to procedural fairness, given that they had previously submitted their response to the notice. The authorities cannot circumvent this process and proceed with demolition, as it would violate their rights under **Article 300-A** of the Indian Constitution, which ensures the **Right to Property**.

124. The order of 10th March 2015, issued by the Financial Commissioner (Revenue), is inapplicable to the instant case as the petitioner was not a participant in the proceedings before the Financial Commissioner. As the petitioner was not a participant in earlier procedures, the aforementioned order cannot be executed or applied to the detriment of the petitioner in the present case. Moreover, it is essential to emphasise that the aforementioned directive was affirmed on a flawed interpretation of Government directive No. LB6 of 1958. The impugned order misconstrues the provisions and intent of this Government Order, so compromising the legitimacy of the decision rendered by the Financial Commissioner. Consequently, even if the petitioner had participated in the proceedings, the ruling would remain defective due to a misinterpretation of the pertinent legal requirements, rendering it inapplicable to the petitioner's case.

125. The respondents have conducted the joint demarcation executed by officials from the JDA, Revenue Department, Forest Department, and the Assistant Commissioner of Revenue, who presented a report dated the 15th of February 2017, it is clear from the perusal of the said report that the petitioner has not unlawfully occupied any portion of Forest land.

126. The respondents' assertion that the joint demarcation was conducted but lacks signatures from any forest officials cannot serve as a basis for the respondents to evade their legal obligations at this stage, especially

since the Revenue Department has not refuted the report in question. The material on record and the examination of the letter dated 23.02.2017 demonstrate that the respondents acknowledge the accuracy of the mutually accepted map.

127. It is also apparent that the two maps are identical. The respondents now assert that although the joint demarcation was conducted, it was not endorsed by any official from the Forest Department. The respondents claim that the Divisional Forest Officer (DFO) Jammu articulated five objections concerning the demarcation in his correspondence dated 23 February 2017, which has been officially documented. On examination, it is apparent that the joint demarcation report, notwithstanding the absence of signatures from Forest Department officials, unequivocally corroborates the petitioner's assertion of not encroaching over any Forest territory. Moreover, the arguments presented by the DFO do not modify the significant conclusions of the demarcation exercise as recorded in the report.

128. Further, upon examination of the RTI response dated 17th June 2015 from the Public Information Officer (PIO/DFO), it is unequivocally confirmed that there is no encroachment on any forest area in the hamlet of Dwara, Tehsil and District Jammu. The RTI answer notably omits reference to Compartment Number 65/Ch of the Bahu Forest Block, which was the focus of the show cause notice. This omission reinforces the petitioner's claim that there is no encroachment on Forest land in the

area in question, as corroborated by the official RTI response. Consequently, the assertion of encroachment regarding the previously indicated compartment is not corroborated by the facts presented in the RTI response.

129. The issue indicates a conflicting move by the DFO after a prolonged duration, despite his past participation in the joint demarcation process. The issuance of a show cause notice after seven months raises numerous questions about the legitimacy and consistency of the Forest Department's position. The DFO's challenge to his own findings constitutes a blatant contradiction, and the seven-month wait between the joint demarcation report and the issuance of the show-cause notice represents a substantial gap. The delay prompts enquiries regarding the lack of rapid action following the joint demarcation and the prolonged interval before the report was handled. The show cause notice was ambiguous, without a particular reference to the khasra number, despite the petitioner receiving a notification labelled as a final show cause notice that included a directive to vacate. The petitioner responded and informed the DFO that the demarcation report has become final, since no party, including the Forest Department, has contested it. In this situation, the petitioner requested a new demarcation; however, the respondent disregarded this request and unlawfully chose a holiday to trespass onto the petitioner's property in most clandestine and illegal manner.

130. Consequently, this Court determines that the Forest Department lacked justification in commencing eviction proceedings based on the order issued by the Financial Commissioner, in which the petitioner was not involved, and which merely referenced land acquired by the petitioner through a valid sale deed that has not been contested by any aggrieved party or the Revenue Department and Forest Department till date. The sale deed remains intact as on today. Moreover, due to lack of any material on record concerning the said encroachment, the entire eviction action initiated by the Forest Department cannot withstand legal scrutiny and is liable to be set aside. Specifically, the respondents concede that the petitioner has not encroached into any portion of the Forest Department's land.

Consequently, questions Nos. A, B and C are addressed accordingly in WP(C) 795/2022.

REPARATION FOR ACTUAL LOSS AND OTHER FORMS OF COMPENSATION.

131. Numerous legislative frameworks lay down provisions on demolitions, mandating authorities to adhere to a defined procedure, which includes the delivery of a demolition notice to the aggrieved party. This affords the individual the opportunity to raise objections or pursue alternative remedies, including the right to be heard. If the demolition occurs without the necessary procedures, it will be deemed illegal and unauthorized, as it violates established legal norms and protections

designed to shield citizens from arbitrary state actions. An illegal demolition transpires when the mandated protocols for demolition, including adequate notification, the opportunity for a hearing, and the provision for contesting the demolition orders, are disregarded. The absence of sufficient notice to the petitioner renders the demolition unconstitutional, as the Government acted without openness, justice, or regard for the rights of the injured person. This form of unlawful demolition may result in a claim for compensation, encompassing both tangible damages incurred due to the demolition (e.g., loss of property, business, livelihood, etc.) and for the annoyance or other detriment caused without following due process.

132. The eviction order issued on 2 March 2022, following an unexplained delay of four months, was never properly served to the petitioners, nor was any notice regarding the status of the proceedings provided. The absence of a notice has led to the petitioner being uninformed of the developments until the action taken on 27 March 2022. The respondents have not annexed the eviction order dated 2 March 2022 with the objections filed in this petition, nor have they provided any evidence that such an order was served to the petitioner. The lack of adequate service and communication of the order constitutes a blatant infringement of procedural fairness and due process. Furthermore, on 27 March 2022, which serendipitously occurred on a Sunday when the courts were closed, the second respondent (DFO), accompanied by a team of

officers and police personnel, conducted the unlawful demolition of structures on the petitioner's property. The eviction was executed surreptitiously, without compliance with the legal protocols or stipulations prescribed by law. This action was done without due process and constituted an arbitrary exercise of power and an abuse of authority. The respondents' conduct in this case are unlawful, representing an abuse of authority and directly violating the petitioner's rights under the law. The Court determines these actions to be arbitrary, void and violative of principles of natural justice.

133. The petitioner submitted a comprehensive valuation assessment, conducted by an accredited valuer, appraising the amount of ₹76,40,200. This valuation relies on the Government's established prices for the reconstruction of structures damaged due to the unlawful actions of the respondents. The valuation report, dated April 2, 2022, has been properly submitted as part of the instant petition. The respondents have not challenged the accuracy or validity of the appraisal in their objections to this report. The respondents have sought to rationalize their capricious and unlawful actions rather than contest the report's content or methodology. Considering that the respondents' actions have been deemed arbitrary and in contravention of legal principles, and acknowledging the undisputed valuation of ₹76,40,200 for the incurred damages, there is no legal barrier to mandating the respondents to compensate the petitioner for the

damages sustained. The sum of ₹76,40,200, as evaluated by the certified appraiser, is both fair and reasonable.

134. Consequently, this Court finds it appropriate to hold the respondents accountable for the payment of ₹76,40,200/- in compensation to the petitioner, as determined by the approved valuer, within one month from today. Should this amount not be remitted within the specified timeframe, the petitioner shall be entitled to receive interest at a rate of 6% from the date it became due and was not paid.

135. The Hon'ble Supreme Court has underscored that demolitions must adhere to established legal protocols and due process. ***IN RE MANOJ TIBREWAL AKASH in WP(Civil) No. 1294/2020***, decided on 06.11.2024 the Supreme Court noted in Paragraph 29 as follows:

“29.....In any case, such high-handed and unilateral action by the State Government cannot be countenanced. Justice through bulldozers is unknown to any civilized system of jurisprudence. There is a grave danger that if high handed and unlawful behaviour is permitted by any wing or officer of the state, demolition of citizens' properties will take place as a selective reprisal for extraneous reasons. Citizens' voices cannot be throttled by a threat of destroying their properties and homesteads. The ultimate security which a human being possesses is to the homestead. The law does not undoubtedly condone unlawful occupation of public property and encroachments. There are municipal laws and town-planning legislation which contain adequate provisions for dealing with illegal encroachments. Where such legislation exists the safeguards which are provided in it must be observed. We propose to lay down certain

minimum thresholds of procedural safeguards which must be fulfilled before taking action against properties of citizens. The state must follow due process of law before taking action to remove illegal encroachments or unlawfully constructed structures. Bulldozer justice is simply unacceptable under the rule of law. If it were to be permitted the constitutional recognition of the right to property under Article 300A would be reduced to a dead letter. Officials of the state who carry out or sanction such unlawful action must be proceeded against for disciplinary action. Their infractions of law must invite criminal sanctions. Public accountability for public officials must be the norm. Any action in respect of public or private property must be backed by due process of law.”

136. The Supreme Court reaffirms the imperative for stringent compliance with protocols prior to any demolition, underscoring that demolitions may not proceed without adequate notice and an opportunity for the aggrieved parties to challenge the proceedings. This demonstrates the Court's dedication to preventing capricious state actions and ensuring accountability.

137. The fundamental objective of the Rule of Law is to avert the misuse of power. The Rule of Law is characterised as an overarching concept including many legal and institutional mechanisms designed to safeguard citizens from state authority. The rule of law is essential for democracy and effective governance.

138. The Hon'ble Supreme Court in the matter of “**Smt. Indira Nehru Gandhi v. Shri Raj Narain**” reported in (1976) 2SCR347 established that

the rule of law is integral to the Constitution's basic construction. It is appropriate to cite the subsequent remarks of Justice Mathew:

"341 .. I cannot conceive of rule of law as a twinkling star up above the Constitution. To be a basic structure, it must be a terrestrial concept having its habitat within the four corners of the Constitution. The provisions of the Constitution were enacted with a view to ensure the rule of law ... "

139. In *“Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.”*, reported in (2018) 8SCR(1) while dealing with the constitutionality of the Aadhaar Act, 2016, the Apex Court held:

"As the interpreter of the Constitution, it is the duty of this Court to be vigilant against State action that threatens to upset the fine balance between the power of the state and rights of citizens and to safeguard the liberties that inhere in our citizens."

140. In his dissenting opinion, Dr. Justice D.Y. Chandrachud (as His Lordship then was) described the principle of the rule of law as under:

"The rule of law is the cornerstone of modern democratic societies and protects the foundational values of a democracy. When the rule of law is interpreted as a principle of constitutionalism, it assumes a division of governmental powers or functions that inhibits the exercise of arbitrary State power. It also assumes the generality of law: the individual's protection from arbitrary power consists in the fact that her personal dealings with the State are regulated by general rules, binding on private citizens and public officials alike."

141. In *“Rojer Mathew v. South Indian Bank Ltd. & Ors”*, reported in (2019) 16 SCR 1 wherein the Hon’ble Apex Court held:

"If Rule of law is absent, there is no accountability, there is abuse of power and corruption. When the Rule of law disappears, we are ruled not by laws but by the idiosyncrasies and whims of those in power."

142. In *"Bilkis Yakub Rasool v. Union of India & Others"*, reported in (2024) 1 SCR 743 wherein the Apex Court has discussed the concept of the rule of law in detail. It was held:

"Rule of law means wherever and whenever the State fails to perform its duties, the Court would step in to ensure that the Rule of law prevails over the abuse of the process of law. Such abuse may result from, inter alia, inaction or even arbitrary action of protecting the true offenders or failure by different authorities in discharging statutory or other obligations in consonance with the procedural and penal statutes. Breach of the Rule of law, amounts to negation of equality under Article 14 of the Constitution.

The concept of Rule of law is closely intertwined with adjudication by courts of law and also with the consequences of decisions taken by courts. Therefore, the judiciary has to carry out its obligations effectively and true to the spirit with which it is sacredly entrusted the task and always in favour of Rule of law. There can be no Rule of law if there is no equality before the law; and Rule of law and equality before the law would be empty words if their violation is not a matter of judicial scrutiny or judicial review and relief and all these features would lose their significance if the courts don't step in to enforce the Rule of law. Thus, the judiciary is the guardian of the Rule of law and the central pillar of a democratic State. Therefore, the judiciary has to perform its duties and function effectively and remain true to the spirit with which they are sacredly entrusted to it.

Further, in a democracy where Rule of law is its essence, it has to be preserved and enforced particularly by courts of law.

Compassion and sympathy have no role to play where Rule of law is required to be enforced. If the Rule of law has to be preserved as the essence of democracy, it is the duty of the courts to enforce the same without fear or favour, affection or ill-will."

143. Thus, in the light of the law laid down by the Hon'ble Apex Court and the directions issued from time to time, it can safely be concluded that the principle of Rule of Law is intrinsically linked to judicial adjudication and the ramifications of court decisions. Consequently, the judiciary must fulfill its responsibilities effectively and in accordance with the sacred trust bestowed upon it, consistently upholding the Rule of Law. The Rule of Law cannot exist without equality before the law; furthermore, both concepts would be rendered meaningless if violations are not subject to judicial scrutiny, review, and redress. These elements would lose their significance if the courts fail to enforce the Rule of Law. Thus, the judiciary serves as the guardian of the Rule of Law and is a fundamental pillar of a democratic state. Therefore, the judiciary must execute its duties effectively and remain faithful to the spirit of its sacred mandate.

144. Moreover, in a democracy where the Rule of Law is fundamental, it must be upheld and enforced, especially by the judiciary. Compassion and sympathy are irrelevant when the Rule of Law is to be upheld. If the Rule of Law is to remain the cornerstone of democracy, it is the obligation of the courts to enforce it impartially, without fear or favour, affection or animosity.

145. Consequently, based on the legal principles established by the Apex Court and the directives issued periodically, it can be conclusively said that the Rule of Law serves as a protection against the capricious exercise of State authority. It guarantees that the acts of the Government and its authorities are regulated by established legal principles instead of arbitrary discretion.

146. The rule of law establishes a framework and value system in which institutions, principles and rules are implemented to reign in the arbitrary exercise of State power and to prevent abuse of power, to ensure predictability and stability, and guarantee that individuals are aware that their lives, liberty, and property will not be taken from them arbitrarily or abusively.

147. The executive undeniably acts as a trustee for the citizen, necessitating that its activities align with the preservation of public trust. When the administration oversteps its authority and functions arbitrarily, dismantling individual's structures without adhering to the legally mandated procedures. The Constitutional Courts will intervene, coming back to the facts of this case, in a classic instance where, **after 62 years**, the Government has questioned the title of the petitioner's predecessor-in-interest as tenants-at-will based on Government Order No. LB-6/C of 1958 and thereafter, the granting of proprietary rights based on Government Order No. S-432 of 1966. The executive in this case seems to have emerged from a profound slumber to execute the demolition in a

highly secretive and unlawful manner, neglecting to adhere to the due process of law.

148. Consequently, the Constitutional Courts, as guardians of citizens' civil freedoms, would undertake all necessary measures to safeguard against the detrimental consequences of State actions. The ideals of public accountability and transparency regarding State actions apply to instances of executive or statutory power, necessitating that such actions also exhibit bona fides. The Hon'ble Supreme Court, in a series of rulings, has determined that public officials of public servants are accountable for their inaction and irresponsible conduct. Responsibility for such actions or inactions must be assigned to the negligent officers to uphold the genuine public goal of an accountable administration. The norms of public accountability are rigorously applicable to government officials. The greater the authority to make decisions, the higher the obligation to act justly and equitably. The Apex Court has determined that every official within the State hierarchy, by virtue of being a "public officer" or "public servant," is accountable for their decisions to both the public and the State.

149. The Hon'ble Supreme Court in the matter of ***"Express Newspapers Pvt. The case Ltd. and others v. Union of India and others"*** reported in ***(1986) 1 SCC 133***, addressed the differentiation between the exercise of power in good faith and its misuse in bad faith. The Supreme Court articulated the principle of fraud on power as follows:

"119. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers "

150. In the case of *"Nilabati Behera v. State of Orissa and others"* reported in (1993) 2 SCC 746, the Apex Court while considering as to whether the courts exercising writ jurisdiction could grant relief under the public law to a citizen complaining of infringement of the indefeasible right guaranteed under the Constitution, observed thus:

"32. Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortuous act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his

first Hamlyn Lecture in 1949 under the title "Freedom under the Law' Lord Denning in his own style warned:

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for negligence This is not the task for Parliament ... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country." "

PROPERTY RIGHTS

151. Article 300-A of the Indian Constitution is a Constitutional right concerning the safeguarding of property rights. It asserts: "No person shall be deprived of his property except by the authority of law."

152. This provision safeguards an individual's property rights, prohibiting arbitrary confiscation by the Government or any authority. The right is contingent upon legal stipulations, permitting property acquisition or expropriation solely through due process of law. Article 300-A guarantees that no individual may be deprived of their property

without adherence to legal procedures, necessitating that any action leading to property loss be sanctioned by law and comply with established legal protocols.

153. The executive must operate transparently to prevent arbitrariness. Given the unique facts and circumstances of this case, which shocks the Court's conscience, specific directives are necessary to ensure that public officials refrain from acting in a high-handed, arbitrary, and discriminatory manner. Should they engage in such conduct, accountability must be imposed upon them.

154. This Court reiterates the directions issued by Apex Court in para 90 and 91 of writ petition (Civil) No. 259 of 2022 with clubbed petitions in the matter of demolition of structure authored by His Lordship Hon'ble Mr. Justice B.R Gavai dated 13.11.2024. For facility of reference, para 90 and 91 of the judgment is reproduced as under:

IX. DIRECTIONS 90.

In order to allay the fears in the minds of the citizens with regard to arbitrary exercise of power by the officers/officials of the State, we find it necessary to issue certain directions in exercise of our power under Article 142 of the Constitution. We are also of the view that even after orders of demolition are passed, the affected party needs to be given some time so as to challenge the order of demolition before an appropriate forum. We are further of the view that even in cases of persons who do not wish to contest the demolition order, sufficient time needs to be given to them to vacate and arrange their affairs. It is not a happy sight to see women, children and aged persons dragged to the streets

overnight. Heavens would not fall on the authorities if they hold their hands for some period.

91. At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.

A. NOTICE

i. No demolition should be carried out without a prior show cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.

ii. The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall also be affixed conspicuously on the outer portion of the structure in question.

iii. The time of 15 days, stated herein above, shall start from the date of receipt of the said notice.

iv. To prevent any allegation of backdating, we direct that as soon as the show cause notice is duly served, intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate. The Collector/DM shall designate a nodal officer and also assign an email address and communicate the same to all the municipal and other authorities in charge of building regulations and demolition within one month from today.

v. The notice shall contain the details regarding:

a. the nature of the unauthorized construction.

b. the details of the specific violation and the grounds of demolition.

c. a list of documents that the noticee is required to furnish along with his reply.

d. The notice should also specify the date on which the personal hearing is fixed and the designated authority before whom the hearing will take place;

vi. Every municipal/local authority shall assign a designated digital portal, within 3 months from today wherein details regarding service/pasting of the notice, the reply, the show cause notice and the order passed thereon would be available.

B. PERSONAL HEARING

i. The designated authority shall give an opportunity of personal hearing to the person concerned.

ii. The minutes of such a hearing shall also be recorded.

C. FINAL ORDER

i. Upon hearing, the designated authority shall pass a final order.

ii. The final order shall contain:

a. the contentions of the notice, and if the designated authority disagrees with the same, the reasons thereof;

b. as to whether the unauthorized construction is compoundable, if it is not so, the reasons therefor;

c. if the designated authority finds that only part of the construction is unauthorized/no compoundable, then the details thereof.

d. as to why the extreme step of demolition is the only option available and other options like compounding and demolishing only part of the property are not available.

D. AN OPPORTUNITY OF APPELLATE AND JUDICIAL SCRUTINY OF THE FINAL ORDER.

i. We further direct that if the statute provides for an appellate opportunity and time for filing the same, or even if it does not so, the order will not be implemented for a period of 15 days from the date of receipt thereof. The order shall also be displayed on the digital portal as stated above.

ii. An opportunity should be given to the owner/occupier to remove the unauthorized construction or demolish the same within a period of 15 days. Only after the period of 15 days from

the date of receipt of the notice has expired and the owner/occupier has not removed/demolished the unauthorized construction, and if the same is not stayed by any appellate authority or a court, the concerned authority shall take steps to demolish the same. It is only such construction which is found to be unauthorized and not compoundable shall be demolished.

iii. Before demolition, a detailed inspection report shall be prepared by the concerned authority signed by two Panchas.

E. PROCEEDINGS OF DEMOLITION

i. The proceedings of demolition shall be video-graphed, and the concerned authority shall prepare a demolition report giving the list of police officials and civil personnel that participated in the demolition process. Video recording to be duly preserved.

ii. The said demolition report should be forwarded to the Municipal Commissioner by email and shall also be displayed on the digital portal.

CONCLUSION:

155. In light of the authoritative enunciation of the law mentioned above, petition WP(C) No. 435/2021 is allowed, and the order dated 15.09.2020 issued by Respondent No. 4, Tehsildar, Jammu, which pertains to mutations Nos. 97, 98, and 105 dated 16.05.2002 and 13.10.2004, is hereby annulled. Furthermore, the actions of Respondent No. 4, Tehsildar, Jammu, in cancelling the aforementioned mutations are declared null, void, inoperative, and non-binding on the petitioner's rights.

156. The petition being WP(C) No. 795/2022 is hereby allowed, and the respondents' actions in demolishing the petitioner's properties are declared unlawful and executed without due process. Consequently, the respondents are mandated to compensate the petitioner with damages to the tune of Rs. 76,40,200/- for the reconstruction of the damaged structures, calculated according to the Government's established rates, and to recover this amount from the concerned officials responsible for the illegal demolition.
157. The respondents are additionally prohibited from disrupting the petitioner's tranquil/peaceful possession of the land comprising 8 kanals in Khasra No. 59/41min, Khewat No. 17/17, Khata No. 45/39, and 4 kanals in Khasra No. 59/41min, Khewat No. 17, Khata No. 45min, and land measuring 7 Marlas, identified by Khasra No. 59/41, Khewat No. 10 min, Khata No. 25 min, located in Dawara, Tehsil and District Jammu.
158. Furthermore, in the present case, the arbitrary and unilateral actions of the former State (now Union Territory) cannot be countenanced, as the State (now UT) has failed to adhere to the due process of law and has attempted to revisit an issue that was conclusively resolved in 1958, when the predecessors-in-interest were designated as tenants-at-will, and later when proprietary rights were granted pursuant to a Government Order in 1966, which facilitated the attestation of mutations and the registration of sale deeds. Consequently, this Court believes that the officials of the State (now UT) who execute or endorse such unlawful actions should face

disciplinary measures, and their illegal transgressions should result in criminal as well as disciplinary repercussions, as public accountability for public officials must be the norms.

159. The Hon'ble Supreme Court, in the unique facts and circumstances of the case titled "*Zulfiqar Haider vs State of U.P.*," reported as (2025) SC 625, has imposed costs of ₹60,00,000/- on the State, allocating ₹10,00,000/- to each of the six affected families. This decision was made to compensate for the infringement of fundamental rights and to ensure accountability for the authorities' unlawful actions. For ease of reference, the pertinent paragraph is reproduced below:

We quantify the costs of Rs. 10,00,000/- (Rupees ten lakhs) in each case. We, therefore, set aside the impugned order dated 8th March, 2021, passed by the High Court of Judicature at Allahabad and dispose of these appeals by passing the following order:

- 1) We direct the PDA to scrupulously follow the directions in the decision of this Court in Re: Directions in the matter of demolition of structures¹;*
- 2) We direct the PDA to pay costs of Rs.10,00,000/-(Rupees ten lakhs) in each appeal to the appellants within a period of six weeks from today. On the failure to pay the amount within the stipulated time, it will carry interest at the rate of 6% per annum from the date of the filing of the present Special Leave Petitions till the payment;*

3) Even assuming that a copy of the order referred to in paragraph 6 of the counter affidavit of the third respondent is already served upon the appellants, we direct the third respondent to provide a copy thereof to the appellants; and

4) We leave it open to the appellants to file appropriate proceedings to establish their rights in respect of the land subject matter of these appeals.

They will also be entitled to file proceedings to claim compensation on account of illegal demolition.

160. Since any action in respect of a public or a private property must be backed by due process of law and in the instant case, the respondents have acted in most clandestine manner by wrongly interpreting the true import and spirit of Government Order No. LB-6/C of 1958 after 62 years, which shocks the conscious of this Court, more particularly, when the ownership rights were also conferred thereafter in 1966 and no grouse was ever raised by any aggrieved party all along these years and clandestinely, *on Sunday*, the structures belonging to petitioner were demolished. Thus, it is a fit case where the State (now UT) must make payment of punitive compensation as well.

161. Accordingly, the respondents are directed to pay the petitioner a punitive compensation to the tune of ₹10,00,000/- (ten lacs) as an interim measures which will be in addition to the compensation by way of damages to the tune of ₹76,40,200/- (seventy six lacs, forty thousand, two

hundred) which has been assessed and is being granted by this Court for demolishing the property of the petitioner without any authority of law.

162. Besides, the Chief Secretary of the Union Territory of J&K is also directed to conduct an in-depth enquiry within a period of two months from today and on the basis of the findings of the said enquiry, take suitable action including penal measures to ensure accountability of individual officers who have acted in violation of the law in the instant case, in the light of the guiding principles laid down by the Apex Court in catena of judgments, where the individual officers have acted in violation of law.

163. Consequently, both writ petitions and all connected applications are, accordingly, disposed of.

164. The Registry is directed to handover the original record to Mr. Vishal Bharti, learned Dy. AG against proper receipt.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
07.05.2025
Vijay & Mubashir

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