

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

**Reserved on: 13.02.2025
Pronounced on: 20.02.2025**

OWP No. 685/2019

1. Gurdev Singh, Age 47 years
S/O Lt. Sh. Inder Singh,
R/O H. No. 84, Sector-2,
Model Town, Gangyal, Jammu.
2. Amrik Singh, Age 57 years
S/O Lt. Sh. Inder Singh,
R/O Village Phaliana,
Tehsil & District Rajouri.
3. Harpal Singh Age 49 years
S/O Lt. Sh. Inder Singh,
R/O Village Dubber,
Tehsil Nowshera District Rajouri.
4. Paramjit Singh, Age 78 years
S/O Lt. Sh. Inder Singh,
R/O Village Inder Nagar
Tehsil R.S. Pura District Jammu.
5. Swaran Kour, Age 78 years
W/O Lt. Sh. Inder Singh
R/O Village Dubber
Tehsil Nowshera, District Rajouri.

....Petitioner(s)

Through: Mr. Jatinder Choudhary, Advocate
Mr. Harmit Kumar Mehta, Advocate.

Vs

1. Union of India, Ministry of Defence
Through Defence Secretary, New Delhi.
2. Principal Director Defence Lands,
Northern Command
C/O 56 APO.
3. Defence Estate Officer,
Northern Command
C/O 56 APO.

4. Deputy Commissioner (Collector) Rajouri.

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI for R-1 to 3.
Mrs. Monika Kohli, Sr. AAG for R-4.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

01. The petitioner, through the medium of this petition filed under Article 226 of the Constitution of India seeks a writ of mandamus directing the respondents to initiate the acquisition proceedings for acquiring land measuring 11 kanals 08 marlas comprising of khasra No. 234 min situated at village Phulliana, Tehsil and District Rajouri in the light of fact that the process of land for acquisition was recommended to be initiated in the year 2009 by the Board of Officers convened for examining the acquisition of land in question.

02. With a view to understand the controversy in its correct perspective, it is deemed appropriate to give the material facts in brief:

2.1 The petitioners claiming to be the owners of the land measuring 11 kanals 08 marlas comprising of khasra No. 234 min situated at village Phulliana, Tehsil and District Rajouri assert that the said land measuring 11 kanals was unauthorizedly occupied by the Army in the year

1954 and the rest of the land measuring 08 marlas in the year 1976; that the petitioners and their predecessors had been running from pillar to post requesting the army authorities either to regularize their unauthorized occupation or to hand over the vacant possession of the land unauthorizedly occupied by the Army; that formal handing/taking over of the land in question was carried out on 7th of Nov., 2000; that the Tehsildar Rajouri vide his communication No. OQ/1327 dated 24.01.2001 certified that the petitioners are entitled to the compensation for the land in question.

2.2

It is further stated in the petition that after a long struggle of more than 50 years, the respondents regularized their unauthorized occupation over the land in question by executing an agreement dated 21.02.2008 with the petitioner No. 5 for hiring of land, in terms of which rent @ Rs. 30,780/- per annum, for land in question was fixed; that Board of Officers was convened to examine the issue of acquisition of the land in question and accordingly the Board of Officers assembled on 21.04.2009, after careful inspection of site and examining of relevant revenue record and the record of the respondent No. 3 and further examining the use of the land to which it was being put recommended that the

land measuring 12 kanals 11 marlas including the land measuring 11 kanals and 08 marlas belonging to the petitioners be acquired for Army on priority basis.

2.3 It is urged in the petition that on the basis of the recommendations made by the Board of Officers, respondent No. 3 vide his communication No. JKR/281/ACQ/DEO dated 25.02.2010 requested the respondent-Deputy Commissioner (District Collector) Rajouri, to process the case for obtaining NOC for acquisition of the land from Home Department of the then State of Jammu and Kashmir; that vide communication No. JKR/281/ACQ/DEO/5 dated 7th of April, 2010 respondent No. 3-Defence Estates Officer, Northern Command, requested the Army authorities to obtain 'In Principle Approval' of Ministry of Defence for acquisition of the land in question; that the respondent-Collector despite lapse of more than nine years failed to seek NOC for acquisition of the land from Home Department of the State of J&K and the Army Authorities also failed to obtain 'In Principle Approval' of Ministry of Defence for acquisition of the land in question.

2.4 Lastly, it is stated that the petitioners are left with no other efficacious remedy but to approach this Court on

the ground that the right to property is a fundamental right in the State of J&K, as such, the right of ownership vesting in the petitioners cannot be taken away without adopting due course of law and paying compensation to the petitioners, hence this writ petition.

- 03.** Pursuant to notice, objections have been filed by the respondents No. 1 to 3 wherein it is admitted that the land of the petitioners was occupied by the Army from the years 1972 and 1976 and not from the year 1954 as alleged by the petitioners in their petition; that the matter regarding its occupation by the Army was reported by the Tehsildar Rajouri, in the month of August 1998 and thereafter the respondents swung into action immediately to complete the procedural formalities in November, 1998 and initiate action, as such, after completing procedural formalities, payment of rentals had been released in the year 2001; that the respondents regularized their possession over the land in question by executing an agreement for hiring of land on 21.02.2008 but prior to that an agreement was executed on 20.02.2001 with Attorney Holder duly authorized by the petitioners to receive the compensation amounting to Rs. 1,51,443/- which was accordingly paid vide Cheque No. 856083 dated 28.03.2001 for the period w.e.f., 01.09.1972 to

31.03.2000; that subsequent agreement thereafter was executed with petitioner No. 5 on 21.02.2008 on her request after death of earlier Attorney Holder, for payment of further duties.

- 04.** It is further stated in the objections that after introduction of revised policy for acquisition of land, approval of Raksha Mantri was pre-requisite, as such, communication dated 07.04.2010 was forwarded to obtain 'In Principle Approval' in terms of revised policy, as such, matter to obtain NOC from the State Govt. got stuck for want of 'In Principle Approval' first, for which Army Authorities were requested to obtain the requisite concurrence and the Deputy Commissioner, Rajouri, kept on reminding for issuance of NOC to the acquisition of land in question and simultaneously Army Authorities have also been reminded to obtain the requisite approval of "Raksha Mantri" vide communications dated 19.11.2010 and 12.01.2011; that the land of the petitioners was occupied by the Army and later regularized to compensate the petitioners for its use and occupation by the Army for which an agreement was executed and accordingly rentals were being paid to the petitioners regularly; that rentals upto 30.09.2018 has been paid to the petitioners and for further period beyond

30.09.2018 is under process; that acquisition of the land in question has also been considered and required procedural formalities were being initiated.

- 05.** Lastly, it is stated in the objections that proceedings for acquisition was further stuck for want of concurrence of Raksha Mantri in terms of revised policy for acquisition and the Army Authorities have been requested to obtain the requisite approval as mandatory to initiate further proceedings for acquisition of land in question and that the respondents are already in the process of acquisition of land and initiate action for its acquisition, requesting the concerned quarters to obtain necessary approval of Raksha Mantri.
- 06.** Objections on behalf of the respondent No. 4 have also been filed wherein it is stated that on the basis of requisition and schedule of property projected by the Assistant Defence Estates Officer, Rajouri total land measuring 12 kanals 11 marlas was requisitioned vide Requisition Order No. DCR/2018-19/LH/26307-14 dated 05.11.2018 and lastly that the answering respondent as per the mandate of law governing the subject has already issued Requisition Order.
- 07.** Heard learned counsel for the parties and perused the record.

- 08.** During the course of the proceedings, the supplementary affidavit came to be filed on behalf of the respondents No. 1 to 3 through Assistant Defence Estates Officer, Rajouri stating that the Local Military Authority, as required in terms of the revised policy for acquisition of the land, had sought 'In Principle Approval' of the Hon'ble Raksha Mantri for further processing the acquisition case whereupon this court vide order dated 06.11.2023 had been pleased to direct the respondent No. 1 to file an affidavit apprising this court as to the decision taken by it on the request of the army authorities for acquisition of the subject land.
- 09.** It has been specifically deposed that the Government of India through Ministry of Defence vide letter dated 19.04.2024 has accorded 'In Principle Approval' (IPA) for acquisition of requisitioned land measuring 10 kanals 10 marlas at an estimated cost of Rs. 97,91,450/- comprising khasra Nos. 154, 229, 234 and 236 of village Phulliana, Tehsil and District Rajouri (UT of J&K) under DEO case No. JKR/282/REQ; that the Army has to convene the meeting of Board of Officers for acquisition of land as per their administrative and operational requirements whereupon sanction for acquisition of the subject land will have to be obtained.

10. Since the respondents, after receipt of 'In Principle Approval', are in the process of acquisition of the land owned by the petitioners, which is subject matter of this petition, this petition, instead of being retained on board, is disposed of at this stage with a direction to the respondents to take effective steps for acquiring the land of the petitioners, which is admittedly under the possession of the Army since the years 1954 and 1976 without providing any compensation and merely on a rental basis, that too was decided as late as in the year 1998, in accordance with law on the subject expeditiously having regard to the relevant statutory time line provided under the applicable Statute.
11. The writ petition is, accordingly, disposed of along with connected application(s), if any. No costs.

(M A CHOWDHARY)
JUDGE

JAMMU
20.02.2025
NARESH/SECY

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

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