

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

Reserved on: 25.09.2025
Pronounced on: 15.10.2025

CJ Court

LPA No. 131/2024 in
OWP No. 228/2004
CM No. 3749/2024
CAV No. 602/2024

Food Corporation of India and others ...Petitioner(s)/Appellant(s)

Through: Mr. M. K. Bhardwaj, Sr. Advocate with
Mr. Ahtsham Hussain Bhat, Advocate

V/s

Sushila Gupta and others Respondent(s)

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Paras Gupta, Advocate

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.**

JUDGMENT

Per Oswal-J

1. Writ petition bearing No. OWP No. 228/2004, titled, "Sushila Gupta and others vs. Food Corporation of India and others" has been disposed of by the learned writ court vide judgment dated 28.03.2024, by directing the appellant-Food Corporation of India to either return the land measuring 3 kanals 9 marla and 73 sq. ft. comprising survey No. 169 min, situated at village, Channi Himmat, Jammu to the respondents within a period of two months or to initiate the proceedings for acquisition of the same in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within the aforesaid period and in case the appellants intend to return the land

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mentioned above to the respondents, the Deputy Commissioner, Jammu has been directed to assess the rental compensation to be paid to the respondents in accordance with law from the date, when the said land was de-notified till the land is actually handed over to the respondents.

2. The appellants being aggrieved of the judgment dated 28.03.2024, have assailed the same on the following grounds.
 - (i) That the State Government in the year 1976 transferred the land to the appellant-FCI and allowed them to raise the construction of godowns at Jammu, but the learned writ court has not appreciated this fact.
 - (ii) That there was no proof in respect of the averments made by the respondents that they owned 8 kanals and 14 marlas of land comprising survey No. 169 min, in village Channi Himmat, Jammu.
 - (iii) That the respondents have raised the disputed questions of facts while invoking extra-ordinary writ jurisdiction, which could have been adjudicated only by the Civil Court, as the Writ Court under Article 226 of the Constitution of India cannot adjudicate such issues, being disputed questions of facts.
 - (iv) That the learned Writ Court did not appreciate the fact that at the time the land was handed over to the appellant-FCI, by the Revenue Department, a boundary wall was constructed surrounding the land handed over to the appellant- FCI in the year,

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1979-80 and the appellants constructed godowns within the said boundary wall.

Factual matrix

3. The writ petition came to be preferred by one Baldev Raj Mahajan, (for the sake of convenience hereinafter to be referred as “writ petitioner”) for directing the respondents i.e. appellants herein either to immediately vacate or acquire 04 kanals of land owned by him comprising survey No. 169 min, situated at village, Channi Himmat, Jammu by stating therein that initially he owned land measuring 8 kanals and 14 comprising survey No. 169 min, situated at village Channi Himmat Jammu, out of which 4 kanals and 14 marlas stood acquired by the Police Department by invoking the provisions of Jammu and Kashmir Land Acquisition Act after paying due compensation to the writ petitioner as determined by the Collector Land Acquisition, Jammu. It was further pleaded that remaining 04 kanals of land was taken over by the appellant-FCI forcibly in 2000 AD for constructing Godowns for storage of food grains. The writ petitioner along with the writ petition annexed the Nishan Dehi (demarcation) report prepared by the Naib- Tehsildar, Niabat Circle-Bahu, Jammu to demonstrate that his 04 kanals of remaining land came to be occupied by the appellants for construction of godowns. It needs to be noted that in the unamended writ petition it was stated by the writ-petitioner that his land was forcibly occupied by the appellants in May-June 1993.

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4. The appellant-FCI objected to the claim of the writ-petitioner by asserting that intricate and disputed facts are involved that cannot be adjudicated by the writ court under Article 226 of constitution of India and that the writ petition is hit by delay and laches, as the writ petitioner has not explained the cause for delay in invoking the extra-ordinary writ jurisdiction of the Court. It is further pleaded in the objections that appellant-FCI was permitted to raise the construction of new godowns on the land comprising various Khasra numbers at Channi Himmat, which was acquired by the State Government in the year 1976. The entire process of acquisition of the land for public purpose was strictly followed by the J&K Government, and the possession of the land was handed over by the Revenue Authorities to the Regional Manager, Food Corporation of India, Jammu against proper receipt. Further, the Additional Deputy Commissioner, Jammu, vide its communication dated 23.07.1976 conveyed the Regional Manager, FCI, Jammu that notification bearing No. 4 stands issued vide endorsement dated 15.07.1976 in respect of the land sought to be acquired for construction of godown at Jammu and shajra of the land was also sent to the appellant-FCI. Also, the Civil Liaison Officer of Home Department, Government of Jammu and Kashmir conveyed the Regional Manager of appellant-FCI that the said department had accorded no objection in respect of acquisition of the land in village Channi Rama and village Channi Himat, Jammu comprising various survey numbers. The communication addressed to the Tehsildar, Jammu by the Collector, Addl. Deputy Commissioner, Jammu

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dated 20.01.1977 demonstrates that in terms of notification No. 330 of 1976, the permission for acquisition of the land was accorded by the Deputy Commissioner in terms of Section 17 of the Land Acquisition Act and in terms of the consent being granted by the Revenue Department vide endorsement dated 01.12.1976, the permission to hand over the land comprising various survey numbers, including survey No. 169 min falling in village Channi Himat was also granted and in pursuance of the said permission, the appellants received possession of the land measuring 23 kanals 13 marlas in village, Channi Himmat Jammu comprising survey No. 169/m (1 kanal 10 marlas), Khasra No. 76/m (16 kanals 09 marlas) Khasra No. 170/m (01 kanal 10 marlas) Khasra No. 171/m (01 marlas). Simultaneously, it is specifically pleaded that the appellants had set up the godowns on the land acquired by the State and handed over to it in the year 1977-78 and further land was taken for its extension after following the procedure set out in the Land Acquisition Act.

5. It would be proper to take note of the fact that the Deputy Commissioner, Jammu, who was not initially arrayed as a party in the writ petition, was subsequently arrayed as respondent No. 4 in the writ petition. In the response filed by the Dy. Commissioner, Jammu, it has been stated that in terms of mutation Nos. 289/jeem and 311/jeem, land measuring 4 kanals 07 marlas each was mutated in favour of the writ petitioner, meaning thereby that the writ petitioner was owner of 08 kanals and 14 marlas of land. It was further stated that land measuring 08 kanals and 14 marlas is under the possession of the Police Department and the

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remaining 04 kanal of land is covered by the godowns constructed by the FCI, which has not been acquired by the FCI.

Submissions:

6. Mr. M. K. Bhardwaj, learned Senior Counsel for the appellants has submitted that the learned writ court could not have exercised its jurisdiction under Article 226 of the Constitution of India as the writ-petitioner had raised the disputed questions of facts, which could not have been adjudicated by the learned writ court. He has further submitted that the learned writ court has failed to appreciate the facts that the boundary wall around the land and storage godowns within the boundary wall, were constructed by the appellant-FCI, after the possession of the land was handed over to the appellants by the then State Government in the year 1976. He has further submitted that fresh demarcation be ordered to determine the factual position existing on spot. Mr. Bhardwaj has also argued that the writ-petitioner had taken contradictory stands before the learned writ court, as initially in the writ petition filed by the writ-petitioner, it was stated that in the month of May-June, 1993 his land was forcibly occupied by the appellants, whereas in the amended writ petition, it is stated that it was in the year 2000 that his land was forcibly occupied by the appellants. He has also urged that the counsel of the writ-petitioner had stated in the communication that rest 4 kanals of land of his client was of no use to him, meaning thereby that the same was vacant, when the said communication was issued.

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7. *Per contra*, Mr. Sunil Sethi, learned Senior Counsel appearing for the respondents has argued that the predecessor-in-interest of the respondents had purchased two plots of land, each measuring 4 kanals and 7 marlas comprising survey No. 169 min, situated at Channi Himmat, Jammu regarding which two mutations bearing Nos. 289 /jeem and 311/jeem were attested. Later the land measuring 4 kanals and 14 marlas was acquired by the Police Department in terms of award dated 04.12.2002 but as the remaining land of the predecessor-in-interest of the respondents was not in possession of the Police Department, therefore, the remaining portion of land measuring 4 kanals was dropped from acquisition. Mr. Sethi has placed much reliance upon the status report submitted by the Revenue Authorities pursuant to the order passed by the writ court on 06.04.2023.
8. Heard learned counsel for the parties and perused the record.

Analysis:

9. To set the record straight, the stand of the appellants, as it is discernable from their response in the writ petition, is that land measuring 23 kanals 13 marlas comprising various survey numbers, including survey No. 169 min, measuring 1 kanal and 10 marlas situated at village Channi Himat, was transferred to the appellants in the year, 1977-78. It is specifically pleaded in para 3 of the objections filed by the appellants to the writ petition that further land was taken for extension after following the procedure set out under the Land Acquisition Act. Thus, it is evident that the appellants can lay their claim with regard to land measuring 01 Kanal

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and 10 marlas only, comprising survey No. 169 min, situated at village, Channi Himmat, Jammu.

10. Taking note of the discrepancy in the stand taken by the Deputy Commissioner, Jammu in respect of the land in possession of the Police Department, the Deputy Commissioner, Jammu was directed to file affidavit in respect of the contradictions crept in the response filed by the Deputy Commissioner. The Deputy Commissioner, Jammu filed an affidavit dated 15.02.2023, wherein it is specifically stated that the land measuring 04 kanals and 14 marlas out of 08 kanals and 14 marlas of the land of the writ petitioner has been transferred to the Police Department, regarding which compensation already stood disbursed and remaining 04 kanals of land is occupied by the FCI in the shape of godowns according to the report submitted by Tehsildar Bahu.
11. Though the affidavit submitted by the Deputy Commissioner, Jammu vindicated the stand of the writ petitioner but still the learned writ court vide its order dated 06.04.2023 directed the Revenue Authorities to undertake fresh survey and measurement of the land, which the writ-petitioner claimed to be his own, but allegedly occupied by the appellants. The representatives of the contesting parties were also permitted to remain present during the said survey. In compliance thereof, a survey report came to be submitted by the Revenue Authorities. The relevant extract of the survey report is reproduced (with grammatical errors) as under:

“That in compliance to Hon'ble Court's order answering respondent got the Survey of the land in question conducted by Tehsildar Bahu, Jammu. The survey report vide No.

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TB/OQ/2023-24/582 dated 31.05.2023 (copy of the report is enclosed herewith as Annexure R-1) was submitted by Tehsildar Bahu and on perusal of the report it has been found that Khasra no. 169 comprised of total area of 11 kanal 15 marla out of which 4 kanal 7 marlas was mutated vide mutation no. 289/Jeem, another patch of land measuring 4 kanal 7 marla was mutated by mutation no. 311/Jeem totaling 8 kanal 14 marla both mutations attested in favor of Baldev Raj S/o Amar Nath vendee (petitioner). The land measuring 1 kanal 9 marla was mutated in favor of Indu Gupta W/o Madan Gopal vide mutation no. 293/Jeem whereas remaining land of the Khasra no. 169 was purchased by Harjit Kour D/o Roop Singh and Narendar Singh, Balwinder Singh sons of Waryam Singh shareholders as vendees.

That land measuring 04 kanal 14 marla as in acquired by the Police Department from Sh. Baldev Raj and others vide award no. LA/ACR/19/79 dated 04.12.2002 and the land stands mutated in favour of Police Department vide mutation no. 2623/Jeem.

The survey was conducted under the supervision of Naib Tehsildar Rakh Bahu and by Girdawar Circle and Patwari concerned in presence of representatives of F.C.I and petitioner, through M/s K.S Construction (Survey, Mapping and Mining consultancy), Bandobasti point was identified and fixed near railway line under Khasra no. 97, towards northern side of Khasra nos. 78 and 168 where Khasra no. 169 is located. Total area of Khasra no. 169 under the occupation of F.C.I. is 4 kanal 19 marla and 73 sq. ft. out of which land measuring 3 kanal 16 marlas as per Tatima Chajra belongs to the petitioner Baldev Raj and the same has not been acquired by the F.C.I. whereas remaining land of petitioner measuring 4 marlas is under road and Nallah. The site map (tatima) duly prepared by M/s K.S construction (Survey, Mapping and Mining consultancy) is enclosed herewith as Annexure R-2.

12. In the survey report, it is mentioned that total area of survey No. 169 under the occupation of FCI is 04 kanals 19 marlas and 73 sq. feet, out of which land measuring 03 kanals and 16 marlas as per Tatima belongs to the writ-petitioner and the same has not been acquired by the FCI, whereas the remaining land of the writ-petitioner measuring 04 marlas has come under the road and nallah. The survey report records presence of officials of FCI. The said report was objected to by the appellants by submitting that as per award dated 31.03.1992, the writ-petitioner is

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owner of land measuring 4 kanal and 7 marlas only comprising survey No. 169 situated at Channi Himmat Jammu, out of which 3 kanals and 2 marlas was acquired for Police Department, meaning thereby that the writ-petitioner was left with only 1 kanal 5 marlas of land, and remaining land falls in khasra No. 169 min, as such the survey report filed by the Revenue Authorities is not in congruence with the award letter dated 31.03.1992. The objections filed by the appellants cannot negate/falsify the survey report, as the report has taken note of all the facts and has been submitted after due demarcation. This court cannot remain impervious to the fact that the writ-petitioner was owner of 8 kanal and 14 marlas of land comprising survey No. 169 min situated at Channi Himmat, out of which 4 kanals and 14 marlas of land, was acquired for the Police Department, meaning there by that he was left with 4 kanals of land. Thereafter, vide order dated 16.11.2023, the learned writ court directed the Patwari concerned to appear in person to explain the map attached to the survey report as Annexure R-2. In response thereto, an affidavit came to be filed by the Tehsildar, Bahu stating therein that out of 01 kanal 18 marlas of land comprising survey No. 169, 06 marlas of land is owned by Indu Gupta wife of Madan Gopal and remaining land measuring 01 kanal and 12 marlas is owned by Harjit Kour D/o Roop Singh and Narinder Singh, Balwinder Singh sons of Waryam Singh.

13. An affidavit also came to be submitted by appellant Nos. 1 to 3 to state that boundary wall was constructed before the FCI godowns were constructed and completed in the year 1979-80. It was also stated that in

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the communication addressed by counsel for the writ-petitioner, it was stated that 4 Kanal and 14 marlas of his land has been acquired and remaining land measuring 4 kanals located in the periphery is of no use to his clients.

14. Record reveals that the notification under section 4 of the J&K Land Acquisition Act came to be issued for acquisition of 99 kanals and 9 marlas of land comprising various survey nos. of Village Channi Himmat for construction of Police Complex. As is evident from the award dated 04.12.2002, the land measuring 5 kanals 11 marlas comprising survey No. 169 including min situated at Village Channi Himmat was dropped, as the same was not found to be in possession of Police Department. This included the land measuring 4 kanals owned by the writ-petitioner, whereas the land measuring 4 kanals and 14 marlas was acquired, as is evident from the apportionment statement, which further establishes the receipt of compensation by the writ-petitioner for land measuring 4 kanals and 14 marlas comprising survey No. 169.
15. The first issue raised by the appellants is that the disputed questions of facts were raised by the writ-petitioner and the remedy of writ was not available to the writ-petitioner. In the present case, the documents placed on record, coupled with the stand of the Deputy Commissioner, it is evident that this issue was raised by the appellants only to avoid the judicial scrutiny by the writ court, of action of the appellants in respect of illegal and unauthorized occupation of the land of the writ-petitioner, as such there is no force in this contention raised by the appellants and the

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same is rejected. It would be apposite to take note of the judgment of the Hon'ble Supreme Court of India in '**A.P. Electrical Equipment Corpn. v. Tahsildar**', **2025 INSC 274**, wherein it has been held as under:

47. One stock argument available with the State in this type of cases is that the question whether the actual physical possession of the disputed land had been taken over or not is a seriously disputed question of fact, which the High Court should not adjudicate or determine in exercise of its writ jurisdiction. **As a principle of law, there need not be any debate on such a proposition, but by merely submitting that it is a seriously disputed question of fact, the same, by itself, will not become a question of fact. To put it in other words, having regard to the materials on record, which falsifies the case of the State Government, then such materials should not be overlooked or ignored by the Court on the principle that the issue with regard to taking over of the actual physical possession would be a disputed question of fact.**

48. Normally, the disputed questions of fact are not investigated or adjudicated by a writ court while exercising powers under Article 226 of the Constitution of India. But the mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of this writ court in granting appropriate relief to the petitioner. In a case where the Court is satisfied, like the one on hand, that the facts are disputed by the State merely create a ground for the rejection of the writ petition on the ground of disputed questions of fact, it is the duty of the writ court to reject such contention and to investigate the disputed facts and record its finding if the particular facts of the case, like the one at hand, was required in the interest of justice.

49. There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976 respectively. Obviously, the High Court must avoid such consequences.

(emphasis added)

16. Next, it is urged that there was delay in filing the writ petition, as the appellants had raised the boundary wall in the year 1979-80 and the

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godowns were constructed inside the boundary wall. Therefore, even if the writ-petitioner had any cause, it became stale as he did not choose to file the writ petition within reasonable period. It is true that it is the stand of the appellants that they constructed boundary wall in the year 1979-80 after the land was transferred to them by the State Government in the year 1976. In para-3 of their response, they have stated about the receipt of possession of land measuring 23 kanals 13 marlas comprising various survey nos. including survey no. 169 measuring 1 kanal and 10 marlas only, in village Channi Himmat but have also stated that further land was taken for its extension after following the procedure set out under the Land Acquisition Act. As already mentioned above, the appellant-FCI cannot lay any claim over the land in excess of 1 kanal and 10 marlas comprising survey no. 169. Interestingly, no documentary evidence has been placed on record by the appellants to establish that land other than the one transferred by the State Government was acquired for the appellants under the Jammu and Kashmir Land Acquisition Act. Though in the survey report submitted by the Revenue Authorities it is stated that the land measuring 3 kanals and 16 marlas comprising survey no. 169 owned by writ-petitioner is in possession of appellant-FCI but still the learned writ court has directed the appellants to either return the land measuring 3 kanals 9 marla and 73 sq. ft. only instead of 3 kanals and 16 marlas, comprising survey No. 169 min, situated at village, Channi Himmat, Jammu to the respondents or to initiate the proceedings for acquisition of the same in terms of the Right to Fair Compensation and

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Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The respondents have not objected to the relief granted by the learned writ court in respect of land measuring 3 kanals, 9 marlas and 73 sq. feet only, as such this court has not shown any indulgence, more particularly, when it appears that it was done to ensure that the appellant-FCI remains in possession of land measuring 1 kanal and 10 marlas comprising survey no. 169. The learned writ court has protected the interest of the appellants as well.

17. Be that as it may, the appellant-FCI is an instrumentality of State and even if it is assumed that there was some delay on the part of the writ-petitioner to avail the remedy of writ against the appellants, still this ground is not available to the appellants to deny the claim of the writ-petitioner. Once it is established that the appellants are in unauthorized possession of land of the writ-petitioner, the doctrine of 'delay and laches' cannot be cited as a defence by the State and its instrumentalities to defeat the right to property of the citizen, a right though not a fundamental right but a constitutional right in terms of Article 300-A of the constitution of India and recognized as human right by the Hon'ble Supreme Court of India. In this context, it is apt to take note of the judgment of Hon'ble Supreme Court of India in '**Vidya Devi v. State of H.P., (2020) 2 SCC 569**', where in it has been held as under:

12.10 This Court in *State of Haryana v. Mukesh Kumar* held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.

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12.11 We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to “adverse” possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.

12.12 The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

18. In ‘Madras Port Trust v. Hymanshu International’, (1979) 4 SCC

176, the Supreme Court of India has held as under:

We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905). **The plea of limitation based on this section is one which the court always looks upon with disfavor and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.** Here, it is obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (II of 1905).

(emphasis added)

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19. Lastly, the contradictory stands of the writ-petitioner were stressed upon by the learned Sr. Counsel for the appellants that in the un-amended writ petition, it was urged by the writ petitioner that his land was forcibly occupied by the appellants in the year 1993, where as in the amended writ petition, it was pleaded that the land was forcibly occupied by the appellants in the year 2000 and further that in the communication addressed by the counsel for the writ-petitioner to Assistant Commissioner (Rev) Jammu, it was stated that left out 4 kanals land of his client located in the periphery, was of no use to him. Both these contentions pale into insignificance in light of the response of respondent No.4 and the survey report submitted before the writ court in terms of order dated 06.04.2023. The submission made by the learned Sr. counsel of the appellants that fresh demarcation be directed to ascertain the factual position existing on spot, cannot be acceded to in view of the clear and unambiguous stand of the Deputy Commissioner, Jammu, duly substantiated by the fresh survey report submitted by the Revenue Authorities pursuant to order dated 06.04.2023 passed by the learned writ court.

Conclusion:

20. We have independently considered the issues at hand and have reached the same conclusion, arrived at by the learned writ court also, that the appellants are in unauthorized occupation of the land measuring 3 kanals 9 marlas and 73 sq. feet comprising survey no. 169 min situated at Village Channi Himmat Jammu, owned by the writ-petitioner. After

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examining the judgment passed by the learned writ court, we find that the same is not only well reasoned but also in accordance with law, necessitating its endorsement by this court.

21.In view of above, this appeal is found to be without any merit and is dismissed without costs.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

JAMMU:
15.10.2025
Karam Chand/Secy

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

