

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

Case:- WP(C) No. 158/2024
CM No. 360/2024
c/w
CCP(S) No. 199/2024

1. Kalyan Singh, 61 years S/o Lal Chand
2. Swami Raj, 51 years, S/o Lal Chand
3. Bidya Lal, age 59 years, S/o Hamir Singh
4. Jeet Singh, age 55 years, S/o Sher Singh
5. Bharat Singh, age 53 years, S/o Sher Singh,
All R/o Village Gadi, Tehsil Bhagwah, Doda. Petitioner(s)

Through: None

Vs

1. UT of J&K, through Commissioner Secretary,
PW(R&B) Department, Civil Secretariat, Jammu/Srg.
2. The Deputy Commissioner, Doda,
3. The Executive Engineer, PMGSY, Division Doda.
4. Major Singh, Tehsildar Bhagwah, Doda.
5. Block Development Officer, Block Bhagwah, Doda
6. Narayan Singh (In-service), S/o Jagtu, R/o Village
Zanool Bhagwah, Doda.
7. Sewa Singh (Lumberdar), S/o Prem Nath, R/o Village
Klass Bhagwah, Doda.
8. Bhagwan Singh (Contractor) S/o Trathu R/o Zanool
Gadi Bhagwah, Doda.
9. Dharminder Singh (Contractor), R/o Shiva Doda. Respondent(s)

Through: Mr. Ravinder Gupta, AAG
Ms. Monika Kohli, Sr. AAG
Ms. Monika Thakur, Assisting Counsel vice
Mr. S S Nanda, Sr. AAG
Mr. Vikas Mangotra, Advocate

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

ORDER (ORAL)
(01.03.2025)

01. The petitioners through the medium of present petition have sought the following reliefs:

(a) *“Allow the present petition;*

(b) *Direct the official respondents to immediately stop the*

construction work of the illegal road from Gaddi Bus Stand to Village Zanoool and Klass with immediate effects and deal with the encroachers under law and further take steps to restore the land of the petitioners in its original condition, as was existed, at the time of encroachment.

(c) Direct the respondents to pay appropriate compensation to the petitioners for damaging their above-mentioned land and trees.

(d) Direct the respondents to produce before this Hon'ble Court the entire record along with DPR and alignment as well as survey with respect to the road construction from Gaddi Bus Stand to Village Zanoool and village Klass Tehsil Bhagwah Doda".

02. Brief facts of the case are that the petitioners who are inhabitants of the remote village Gaddi in District Doda, are aggrieved due to inaction on the part of the respondents 1 to 5 in protecting their ownership land which is being used illegally by the respondents 6 to 9 in constructing a road from Gaddi Bus Stand to village Zanoool and Klass without legal sanction of any such road and without acquiring the land of the petitioners.

03. The specific case of the petitioners is that the road is being constructed on the proprietary land of the petitioners' without following due procedure of law and feeling aggrieved of the same, the petitioners have preferred a representation in this regard before the respondents 2, which has not been redressed till date. Further, the allegation of the petitioners in the instant petition is that the road is being constructed without any sanction and without issuing any tender and feeling aggrieved with the inaction on part of the official respondents, the

instant petition has been preferred.

- 04.** Response stands filed on behalf of respondent No.1 & 3 who are being represented by Mr. Ravinder Gupta, learned AAG and Ms. Monika Kohli, Sr.AAG on behalf of respondent No.4. As per the stand taken by respondents 1 and 3, it is apparently clear that as per the report of Tehsildar Bhagwah, the proprietary land of petitioner No.1 is not coming in the alignment of the road from Sanool to Gayool. The further stand of the respondents insofar as the petitioner No.2 is concerned is that he has encroached, large chunk of Forest/State land at Sanool Gaddi where he has constructed shops and khokhas at Sanool and is running multiple business activities, such as, wholesale Karayana Shop, Poultry Farm, Chicken Shop etc. Both the petitioners 1 & 2 have illegally encroached large chunk of State land, which is coming under the alignment of the abovesaid road and not their proprietary land as alleged. The further stand of the respondents is that both the petitioners 1&2 have raised illegal structures on the State land and on PMGSY road.
- 05.** Insofar as the petitioner No.3 is concerned, no person of such name is residing in Revenue Village Gaddi. The further stand taken by the respondents 1 and 3 in their reply affidavit is that insofar as petitioner No.4 is concerned, who is an ex-serviceman and has given an undertaking in the shape of affidavit that he has not filed the instant writ petition nor authorized any person to file the same and his land is not coming in the road alignment nor has any objection with the

construction of road in question. With a view to substantiate the same that copy of the affidavit of Jeet Singh has also been placed on record along with the reply affidavit.

06. Insofar as the petitioner No.5 is concerned, who happens to be real brother of petitioner No.4 he has also given an undertaking in the shape of affidavit which has been duly attested by the Judicial Magistrate to the effect that he has not filed the instant petition nor authorized any person on his behalf to cause appearance and his land is also not coming in the road alignment nor he has any objection with the construction of road in question. The respondents have further submitted that so far as the road construction is concerned, the tractor road has been constructed by the contractors/ respondents 8 and 9 after fulfilling all the requisite formalities as envisaged under law and the same stand completed by the end of December, 2023 i.e before filing of instant petition. Accordingly, Mr. Gupta, learned AAG submits that no alleged cause of action accrued to the petitioner to file the instant petition and accordingly he prays that the instant petition is utterly misconceived, false and frivolous, deserves dismissal at the very threshold.

07. The response also stands filed on behalf of respondent No.4, who has been arrayed by name. The said respondent has taken a specific stand that the land falling under Khasra No. 584 is a proprietary land recorded in the ownership of Bodh Raj and others and out of the aforesaid khasra only 04 Marlas of the land from the share of Sh. Taya

S/o Amar Singh has come under the road in question, as such, the petitioners have no *locus standi* to claim any compensation for the land in question.. The respondents have further taken a specific stand in the aforesaid objections that insofar as the land falling under Khasra No. 1324/568 is concerned, the same is State Land recorded in the possession of the State i.e Sarkar Maqbooza Sarkar and out of the aforesaid khasra, the land measuring 04 Kanal-15 Marlas was mutated in favour of the petitioners vide Mutation No. 1178 under Jammu and Kashmir State Land (Vesting of Ownership to Occupants) Act, 2001, commonly known as Roshni Act, which mutation has also been cancelled in compliance to the directions passed by the Hon'ble Division Bench of this Court in PIL NO. 19/2011 titled "*S K Bhalla vs State and others*".

08. The further stand of the respondents is that the Roshni Act has since been repealed and thus the petitioners on this ground also have no *locus standi* to claim any title over the State Land Ms. Kohli, learned Sr. AAG submits that the petition is devoid of any merit and deserves dismissal. She further submits that the land falling under Khasra No. 582 is a proprietary land recorded in the ownership of Sh. Musadi and others and the petitioners 1 and 2 have simply been recorded as mere occupants as per the revenue record and have no ownership right as claimed by the petitioners
09. Insofar as respondents 6 & 7 Mr. Vikas Mangotra, Advocate appears on their behalf submits that they are not a necessary party and have

been unnecessarily arrayed as party respondents in the petition and submits that their names be struck from the array of respondents, as they have nothing to do in the instant petition. Insofar as respondents 8 and 9 are concerned, they are contractors, who have since executed the work and this aspect of the matter has already been admitted by the official respondents while filing the reply.

10. Heard learned counsel for the respondents at length. There is no representation on behalf of the petitioners.
11. The only grievance which has been projected in the instant petition by the petitioners is that their proprietary land is being acquired without following due process of law and accordingly sought a direction against the respondents to stop the said construction work of the road from Gaddi Bus Stand to Village Zanoool and Klass with a further direction against the respondents to pay appropriate compensation to the petitioners for damaging their land and trees.
12. The respondents have filed detailed reply affidavit in which they have taken a specific stand that no proprietary land of the petitioners have ever been taken for construction of the road. On the other hand, the petitioners have occupied the State land without any authority of law, for which, the State is contemplating to take action, in light of the fact that the mutation which was attested in favour of some of the petitioners stood cancelled in terms of the order/judgment passed by the Division Bench of this Court in PIL No. 19/2011 titled "*S K Bhalla vs State and others*". Even otherwise also, the respondents

have taken a specific stand that as per the revenue record which has been reproduced in the preceding paragraphs that no such land of the petitioners have ever been acquired or is coming in the alignment of construction of road.

13. Thus, in the light of the stand taken by the respondents and also in the light of the relevant record, the very foundation of the petitioners false flat, therefore, the writ petition which has been preferred by the petitioners is misconceived, false, frivolous and is contrary to the record and deserves dismissal.

14. Accordingly, the writ petition is dismissed being devoid of merit along with connected applications. However, the respondents are at liberty to proceed against petitioners, strictly in accordance with law, in case if it is found that the petitioners have encroached State land.

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15. In light of the order passed in the main petition, no fruitful purpose will be served to keep this contempt petition alive, which has been preferred against the interim order. Accordingly, the proceedings in the instant contempt petition stand ***closed***. Rule, if any, shall stand ***discharged***.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
01.03.2025
Vijay

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No