

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

Case No: LPA No. 129/2020

*Reserved on: 20.11.2025
Pronounced on: 27.11.2025
Uploaded on: 27.11.2025*

*Whether the operative part or
full Judgment is pronounced : **Full***

1. Sher Mohd,
age 63 years
2. Sh. Sultan Mohd.,
age 57 years
3. Sh. Ramzan Din,
age 51 years
4. Sh. Ghani Mohd.
age 48 years,
5. Sh. Bashrat Mustafa,
age 45 years,

All sons of late Sh. Mohd.
Zaman,

6. Sh. Wahab Din,
age 71 years
S/O Late Sh. Ghulam Rasool.

All residents of Village
Barote, Tehsil Basholi at
present Basantpur Bhatindi,
Tehsil and District Kathua.

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

Through: Mr. Shah Mohd. Chowdhary, Sr. Advocate with
Mr. Mursaleen, Advocate and Mr. Devesh,
Advocate

Vs

1. The UT of Jammu and Kashmir
through Commissioner/Secretary,
Department of Revenue,
Civil Secretariat, Jammu.

2. The District Collector
(Deputy Commissioner),
Kathua.
3. The Collector, Land Acquisition,
Thein Dam Project,
Basholi, Tehsil Basholi,
District Kathua.
4. The Tehsildar, Basholi.

..... Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG

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

JUDGMENT

PER OSWAL-J

1. The appellants (writ petitioners) filed writ petition bearing OWP No. 1684/2011 for grant of following reliefs: -

(A)Mandamus

Commanding/directing the respondents to attest mutation in favour of petitioners under Govt. Order No.LB-6/C of 1958 dated 5th June, 1958 with respect to land falling under Khasra Nos. 257 (20 Kanals and 14 Marlas) 266 (07 Kanals and 14 Marlas) 267 (00 Kanal and 18 Marlas) 276 (01 Kanal and 15 Marlas), 230 (24 Kanals and 00 Marlas), 302 (24 Kanals and 17 Marlas), 273 (09 Kanals and 06 Marlas) and 274 (10 Kanals and 16 Marlas), total measuring 100 Kanals situated at Village Barote, Tehsil Basholi, District Kathua;

(B)Mandamus

Commanding/directing the respondent to attest mutation in favour of the petitioners under Govt. Order No. S-432 of 1966 dated 03.06.1966 declaring the petitioners as owner of the above said land.

(C)Mandamus

Commanding/directing the respondents to pay compensation to the petitioners of the above said land acquired by official respondents for construction of Ranjeet Sagar Dam (Thein Dam) Project, Basholi as per the award for which the compensation has been paid to other similarly situated owners.

Any other writ, order or direction this Hon'be Court deems fit and proper in the facts and circumstances of the case may also be passed in favour of the petitioners and against the respondents.

2. The case projected by the appellants—writ petitioners in the writ petition was that their predecessors-in-interest were in physical and cultivating possession of agricultural State land comprising Khasra Nos. 257 (20 Kanals and 14 Marlas) 266 (07 Kanals and 14 Marlas) 267 (00 Kanal and 18 Marlas) 276 (01 Kanal and 15 Marlas), 230 (24 Kanals and 00 Marlas), 302 (24 Kanals and 17 Marlas), 273 (09 Kanals and 06 Marlas) and 274 (10 Kanals and 16 Marlas), total measuring 100 Kanals situated at Village Barote, Tehsil Basholi, District Kathua, and in the year 1960, the aforesaid land came to be allotted in favour of appellant No. 1 and the predecessors-in-interest of appellants 2 to 6.
3. The appellants asserted that the said land was subsequently acquired by the Government of Jammu & Kashmir for the construction of the Ranjeet Sagar Dam (Thein Dam) Project at Basholi, and that possession thereof was taken over by the Collector, Land Acquisition, Basholi, from the appellants in the year 1994. It was further averred that the Collector, Land Acquisition (respondent No. 3), prepared an acquittance roll pertaining to the land so acquired, showing the appellants as being in occupation and possession of the said land as allottees, and assessed compensation at the rate of Rs. 625 per kanal for the land in question. It was contended that in terms of Govt. Order No.LB-6/C of 1958 dated 5th June, 1958, the occupants of the State land including that vested in the State under the provisions of Big Landed Estates Abolition Act, 2007 and that from which the ejectment was ordered under Council Order No.40-C of 1944, but the ejectment had not been taken place till Kharief 1957-58, the occupants of the State land were to be recoded as ‘tenants-at-will’ (under the State) in respect

of the area in their cultivating possession or occupation in Kharief 1957-58 subject to the conditions contained therein, but the appellants No.1 and predecessors-in-interest of the appellants 2 to 6 were not recorded as 'tenants-at-will' for the reasons unknown to them. Thereafter, Govt. Order No. S-432 of 1966 dated 3rd June, 1966 was issued by the State Government, whereby it was ordered that proprietary rights be conferred on the cultivators of State land, who were permanent residents of the State and were already declared as 'tenants-at-will' in terms of Govt. Order No.LB-6/C of 1958 dated 5th June, 1958 subject to the conditions contained therein. It was pleaded by the appellants that their predecessors-in-interest were pursuing their cases before the Revenue Authorities for attestation of mutation under the above said orders, but no action was taken by the concerned Revenue Authorities and in the meanwhile Govt. Order No.LB-6/C of 1958 dated 5th June, 1958 and S-432 of 1966 dated 3rd June, 1966 were rescinded by the Govt. of Jammu & Kashmir, Department of Revenue on 29.09.1973 and a complete ban came to be imposed on attestation of the mutation. Vide Govt. Order No. Rev (LB)112/81-(B) dated 08.07.1986, the Govt. Order No.LB-6/C of 1958 dated 5th June, 1958 was again made operative from the date of issuance of that order, i.e., 5th June, 1958 and the beneficiaries were held entitled to the conferment of ownership rights under Govt. Order No.S-432 of 1966 dated 3rd June, 1966 also and the Revenue Authorities were directed to initiate action accordingly. With the revival of Govt. Order No.LB-6/C of 1958 dated 5th June, 1958 and Govt. Order No. S-432 of 1966 dated 3rd June, 1966, the predecessors-in-interest of the appellants again started pursuing the

matter for attestation of mutation, but no action was taken by the Revenue Authorities as the acquisition process had already been initiated by the Government, resultantly no mutation could be attested in favour of the appellants.

4. Vide Govt. Order No.153-LB of 1989 dated 22.06.1989 again a ban was imposed by the Govt. of Jammu & Kashmir on attestation of mutation under Govt. Order No.LB-6/C of 1958 dated 5th June, 1958 and Govt. Order No. S-432 of 1966 dated 3rd June, 1966. The ban imposed by the Government on attestation of the mutations came to be challenged and the Division Bench of this Court quashed the said ban. Thereafter, vide Govt. Order No. Rev(LB) 2001 of 2007 dated 12.06.2007, the Govt. of Jammu & Kashmir rescinded Govt. Order No.156-LB of 1989 dated 22.06.1989 whereunder a ban was imposed on attestation of mutation under Govt. Order No. LB-6/C of 1958 dated 5th June, 1958 and it was directed that all pending work of attestation of mutations under Govt. Order No.LB-6/C dated 5th June, 1958 and Govt. Order No.S-432 of 1966 dated 3rd June, 1966 be completed forthwith strictly in accordance with the terms and conditions laid down therein, and vide Govt. Order No. Rev(LB) of 2007 dated 12.06.2007, it was ordered that proprietary rights be conferred on the cultivators of the State land, who are permanent residents of the State, and have been allotted State land, in terms of Govt. Order NoLB-7/C of 1958 dated 5th June, 1958 subject to the conditions mentioned therein.
5. The precise case of the appellants is that they were entitled to be recorded as ‘tenants-at-will’ in terms of Govt. Order No.LB-6/C of 1958 dated 5th June, 1958 and further conferment of ownership rights

qua the land mentioned above under Govt. Order No. SD-432 of 1966 dated 3rd June, 1966 and because of inaction of the Revenue Authorities to do the same, the appellants were not provided the compensation in lieu of their land mentioned above acquired for construction of Ranjeet Sagar Dam (Thein Dam) Project, Basholi.

6. The writ petition was objected to by the Collector Land Acquisition (respondents No. 3) by asserting that he had nothing to do with the attestation of mutation in favour of the appellants and it was for respondents 2 & 4 to redress the grievance of the appellants under rules. It was stated that the appellants were not entitled to compensation claimed in lieu of land falling under Khasra Nos. 257, 166, 267, 276, 230, 302, 273 and 274 total measuring 100 Kanals situated at Village Barote, Tehsil Basholi, District Kathua, as it was the State land. It was also stated that the award was passed in favour of the owners of the land and the appellants could not make any claim for compensation as they were not the owners of the land.
7. After hearing learned counsel for the parties, the learned writ Court vide judgment dated 05.10.2020 dismissed the writ petition.
8. The appellants have now come up with this intra-court appeal thereby challenging judgment dated 05.10.2020 passed by the learned writ Court on the identical grounds as were urged before the learned writ Court.
9. Mr. Shah Mohd Chowdhary, learned Senior Counsel appearing for the appellants has submitted that the learned writ Court has dismissed the writ petition preferred by the appellants solely on the ground of delay and laches and further that the learned writ Court was not correct in

stating that the orders benefit of which are being sought by the appellants are of the years 1958 and 1966 and the appellants were not diligent about their own rights and as such could not have filed the writ petition after inordinate delay. Learned Senior counsel has vehemently argued that the appellants were recorded as allottees in the revenue records and in terms of Govt. Order No. LB-6/C of 1958 dated 5th June, 1958 their predecessors-in- interest were required to be recorded as ‘tenants-at-will’ and further ownership rights were required to be conferred upon them in terms of Govt. Order No. S-432 of 1966 dated 3rd June, 1966, but it was due to sheer inaction of the respondents that the appellants were deprived of the compensation in lieu of the land acquired for construction of Ranjeet Sagar Dam (Thein Dam) Project, Basholi. To substantiate his claim, he has placed reliance upon the judgments of the Hon’ble Supreme Court of India in cases titled **Tukaram Kana Joshi and others through Power of Attorney Holder Vs. M.I.D.C. and others** reported in AIR 2013 SC 565, **Vidya Devi Vs. State of Himachal Pradesh and others** reported in AIR 2020 SC 4709, and the judgments of this Court in cases titled **Kewal Krishan Vs. State of J&K and others**, reported in 2004 (II) S.L.J. 617, **Krishana Vs. State of J&K and others**, reported in 2022(2) JKJ 377 (HC) and **Krishan Singh and another Vs. UT of J&K and others** reported in 2021 JKLHC-JMU- 592.

10. The respondents have also filed their response in the present appeal, wherein they have reiterated and reaffirmed the stand earlier taken by them in their objections before the learned writ Court, without adding anything substantially new to their defence.

11. *Per contra*, Mrs. Monika Kohli, learned Sr.AAG has submitted that the learned writ Court has rightly dismissed the writ petition on the ground of delay and laches, as the appellants had failed to assert their rights within a reasonable time and had remained in deep slumber for more than a decade, thereby disentitling themselves to any discretionary relief under Article 226 of the Constitution. In the alternative, she contended that, even otherwise, in terms of Circular No. Rev. LB-10/80 dated 23.02.1980 issued by the Revenue Department, the appellants would be entitled to only one-third of the compensation assessed by the Collector, Land Acquisition, and not beyond that.

12. We have heard learned counsel appearing for the parties at length and have given our thoughtful consideration to the submissions advanced. We have also meticulously perused the entire record placed before us.

13. A bare perusal of the record reveals that the learned writ Court has dismissed the writ petition on the ground that the Government Orders relied upon by the appellants for seeking attestation of mutation in their favour were issued way back in the years 1958 and 1966, the Notification under Section 4(1) of the J&K Land Acquisition Act was issued on 13.08.1982 and the award came to be passed by the Collector, Land Acquisition on 17.12.1993, whereas the appellants slept over the matter for decades. On that basis, the learned writ Court concluded that the claim projected by the appellants was highly belated and, therefore, they were not entitled to any relief. While arriving at this conclusion, the learned writ Court placed reliance upon the judgment rendered by the co-ordinate Bench of this Court in *Farooq Ahmed v. State of J&K and others*, LPA No. 210/2019, decided on 21.08.2019.

14. The record indicates that the appellants or their predecessors-in-interest were in possession of the land in question. The acquittance roll prepared by the Collector, Land Acquisition, further substantiates this position, as their names have been duly reflected therein as allottees. Mrs. Monika Kohli, learned Sr. AAG, has submitted that, in terms of Circular No. LB-10/80 dated 23.02.1980, issued by the Revenue Department, the appellants would be entitled only to one-third of the compensation in lieu of the acquired land and not beyond that.

15. Be that as it may, as already observed hereinabove, the learned writ Court has not undertaken any examination of the matter on merits and has proceeded to dismiss the writ petition solely on the ground of “delay and laches”. In this context, it becomes necessary to advert to the legal position settled by the Hon’ble Supreme Court of India concerning the application of the “doctrine of delay and laches” in land acquisition matters. Referencing the mandate articulated in case titled **Tukaram Kana Joshi and others through Power of Attorney Holder v. M.I.D.C. and others**, reported in AIR 2013 SC 565, the Hon’ble Supreme Court of India emphasized the approach, constitutional courts must adopt while adjudicating claims concerning the deprivation of property and entitlement to compensation. The relevant observations, in this regard, are extracted herein below:

9. The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment, etc. Now however, human rights are gaining an even greater multifaceted dimension. The right to property is considered very much to be a part of such new dimension. (Vide Lachhman Dass v. Jagat Ram, Amarjit Singh v. State of Punjab, State of M.P. v. Narmada Bachao Andolan, State of

11. There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. The functionaries of the State took over possession of the land belonging to the appellants without any sanction of law. The appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode. There is a distinction, a true and concrete distinction, between the principle of “*eminent domain*” and “*police power*” of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of “*absolute power*” which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the landowner as a “*subject*” of medieval India, but not as a “*citizen*” under our Constitution.

12. The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly

and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide *P.S. Sadasivaswamy v. State of T.N.*, *State of M.P. v. Nandlal Jaiswal* and *Tridip Kumar Dingal v. State of W.B.*)

14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. **When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay.** The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide *Durga Prashad v. Chief Controller of Imports and Exports*, *Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur*, *Dayal Singh v. Union of India* and *Shankara Coop. Housing Society Ltd. v. M. Prabhakar*)

(emphasis added)

16. Further in case titled **Vidya Devi Vs. State of Himachal Pradesh and**

others, the Hon'ble Supreme Court of India has held as under :-

“10.7. 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.**

In a case where the demand for justice is so compelling, a constitutional Court would exercise its jurisdiction with a view to promote justice, and not defeat it.

(emphasis added)

17. The Hon'ble Supreme Court of India in **Urban Improvement Trust**

Vs. Smt. Vidhya Devi and others reported in **2024 INSC 980**, in

paragraph No.51 has held as under :-

“51. The decisions of this Court have consistently held that the right to property is enshrined in the Constitution and requires that procedural safeguards be followed to ensure fairness and non-arbitrariness in decision-making especially in cases of acquisition by

the State. Therefore, the delay in approaching the court, while a significant factor, cannot override the necessity to address illegalities and protect right to property enshrined in Article 300A. The court must balance the need for finality in legal proceedings with the need to rectify injustice. The right of an individual to vindicate and protect private property cannot be brushed away merely on the grounds of delay and laches.
(emphasis added)

18. In view of the law settled by the Apex Court, the applicability of delay and laches is not automatic but requires consideration on a case-to-case basis, and the pursuit of substantial justice must not be defeated by the rigid application of procedural technicalities such as delay and laches. We have also examined the judgment rendered by the learned Writ Court and find that it has not correctly applied the doctrine of delay and laches while dismissing the writ petition.

19. Considering this position, we find that the appellants have raised issues which merit adjudication, especially as the learned Writ Court did not address the substantive merits of the respective claims of the parties. In these circumstances, we deem it appropriate to set aside the judgment impugned and remit the matter to the learned writ court for fresh consideration and disposal on merits, in accordance with law. Ordered accordingly.

20. The writ petition bearing OWP No. 1684/2011 shall be listed before the learned writ Court on 15.12.2025. The learned writ Court is requested to dispose of the matter as expeditiously as possible.

(Rajnish Oswal)
Judge

(Arun Palli)
Chief Justice

Jammu
27.11.2025
Madan Verma-Secy

Whether order is speaking? Yes.
Whether order is reportable? No.