

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

OWP No. 1031/2018

IA No. 1/2018

CM No. 3479/2021

Inhabitants of Border Area and others

..... Petitioner(s)

Through: Mr. Manik Bhardwaj, Advocate

Vs

Union of India and others

..... Respondent(s)

Through: Mr. Sumant Sudan, Advocate vice
Mr. Vishal Sharma, DSGI
Ms. Priyanka Bhat, Assisting Counsel vice
Mrs. Monika Kohli, Sr. AAG

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

JUDGMENT (ORAL)

06.08.2025

1. The only grievance which has been projected in the instant petition by the learned counsel for the petitioners is that the Union of India through Border Security Force (BSF) acquired the petitioners' land in 2017 for the construction of bunds-purportedly without following any due process of law. Till date, no compensation has been paid to the residents of the border areas in Tehsil Hiranagar, District Kathua and District Samba, who have come before this Court through Sh. Nanak Chand, who is the president of Border Welfare Committee.
2. It is a specific case of the petitioners that the compensation has not been paid in so far as the inhabitants of Border area Tehsil Hiranagar, District Kathua and Samba are concerned as it has been done in other villages of the same District i.e. District Kathua and Samba.

3. The petitioners further submit that the inhabitants of Border areas in Tehsil Hiranagar, District Kathua and Samba are local villagers, cattle grazers, and farmers, derive their livelihood from cultivating agriculture land situated near Indo-Pak International Border. These individuals own and possess immovable properties at various places along the border, spanning multiple districts and depend on this land for their subsistence.

4. The petitioners further submit that, in response to perceived security threats from across the border, the Government of India has formulated several policies to bolster the Indo-Pakistan International Border. These include the construction of composite bunds, pucca morchas, bunkers, barbed-wire fencing, vehicular tracks, ditch-cum-bund structures, Border Outposts (BOPs) trenches, and naka huts, all aimed at enhancing surveillance and defense along the border.

5. It has been vehemently argued by the learned counsel appearing on behalf of the petitioners that the Border Security Force (BSF) and the Indian Army, in the process of constructing composite bunds, Pakka Morchas, Bunkers, barbed-wire-fencing, tracks, ditch-cum-bundhas, Border Outposts (BOPs), trenches and naka huts along the Indo-Pakistan border in Jammu, have forcibly occupied the land belonging to local farmers and villagers in Tehsil Hiranagar, District Kathua and Samba depriving them of their sole means of livelihood.

6. It has been further submitted that the BSF and the Indian Army have constructed permanent bunkers, composite bunds, pucca morchas for border patrolling purposes along the Indo-Pakistan border- occupying villagers' land in Tehsil Hiranagar District Kathua and Samba without payment of rent or

compensation. Such occupation of land belonging to local inhabitants, who are dependent on it for their livelihood, is alleged to be illegal arbitrary and discriminatory.

7. It has also been further submitted that the local inhabitants of the said border area have repeatedly submitted representations to the competent authorities seeking redressal of their grievances. They have formally approached the Deputy Commissioner and other district-level officials, but no remedial action has been taken. Consequently, this petition has been filed seeking compensation for land illegally occupied by the respondents. The petitioners also pray that, the land should be deemed permanently acquired, the respondents must strictly adhere to the procedural safeguards and compensation mechanisms prescribed by law.

8. *Per contra*, reply stands filed on behalf respondent Nos. 2 & 3 in which a specific stand has been taken that as per the notification received from the office of Sub-Divisional Magistrate (SDM), Tehsil Hiranagar, District Kathua dated 19.09.2019, land in respect of 17 villages are involved in acquisition of 135 feet wide strip under jurisdiction of SDM Hiranagar out of which final award of 11 villages has already been received and the land acquisition proceedings of 06 villages is under process. As per the stand of the respondents payment of compensation for 11 villages has been deposited in pursuant to the final award and payment of four villages i.e. Karol Krishna, Chak Bhollan, Chak Tanda & Manyari have been made in advance: The respondents are further submitting that a total amount for disbursement to the land owners of District Kathua has

been calculated which comes to the tune of Rs. 14,49,06,848/-. The reply filed by the said respondents is reproduced hereunder:-

- 8.1 That with reference to the villages mentioned by the petitioners in the writ petition, it is to mention that payment of compensation of land for village Chak Changa amounting to Rs. 2,62,94,940/- and for village Karol Matherian amounting to Rs. 1,78,57,372/- were deposited with Deputy Commissioner Kathua by the CPWD against Final Award. Further, an amount of Rs. 25,86,638/- and Rs. 1,17,128/- have been paid to Shri Nanak Chand (Petitioner) by SDM Hiranagar on 03.07.2017 and 20.02.2018, respectively Payment of Rs. 3,08,20,000/- for 04 villages Karol Krishan, Chak Bhollan, Chak Tanda & Manyari was deposited with Deputy Commissioner Kathua in advance for which land acquisition case is in progress.**
- 8.2 That likewise, in District Samba, Land of 29 villages is involved in respect of 135 Feet wide strip, out of which Final Award of 15 villages issued and payment for land of these 15 villages have been made to Deputy Commissioner Samba by CPWD amounting to Rs. 10,09,33,919/-. Land acquisition cases for remaining 14 villages are under progress. Present status of land acquisition in respect of 135 feet wide strip falling under District Samba.**
- 8.3 That with regard to land acquisition cases of BOPs falling under District Kathua, there are 13 approved BOPs in district Kathua, out of which amount as per Final Award of 11 BOPs has already been deposited and land acquisition cases for 02 Composite BOPs i.e.**

Manihari and Lndi are under progress. Case for additional land measuring 17 Kanal 06 Marla for Composite BOP Karol Krishna is under Progress. Payment of land for remaining composite BOPs is to be made by the CPWD after issuance of final award by the Collector Land Acquisition.

9. The record further reveals that the response also stands filed on behalf of the respondent No. 5 i.e. SDM, Hiranagar. The respondent No. 5 while filing the objections have taken a specific stand that as and when the rental compensation will be deposited by the Defense Estate Officer, Jammu before the Deputy Commissioner, Kathua, the same shall be transferred to the concerned Tehsildar for disbursement to the rightful claimants after following due process.

10. Heard the learned counsel for the parties at length and perused the record.

11. In the context of land acquisition, the Hon'ble Supreme Court of India has consistently upheld that the right to receive compensation when private land is acquired by the State under the power of eminent domain is not merely a statutory right but a constitutional right. This right emanates from Article 300-A of the Constitution of India, which unequivocally provides that:

“No person shall be deprived of his right to property save by the authority of law”

12. In *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai* (2005) 7 SCC 627, the Supreme Court categorically held that any forcible dispossession of a person from their private property, without following due process of law,

constitutes a violation of both human rights and the constitutional right guaranteed under Article 300-A of the Constitution.

“6. ... Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of “eminent domain” may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefore must be paid.”

13. In the similar facts and circumstances of the case, this Court in case titled Abdul Majeed Lone v. Union of India, through Secretary to Govt. of India Home Department, New Delhi and other (OWP 1081 OF 2014) decided on 20.11.2024:

“The law has been settled at naught by the Hon”ble Supreme Court in various authoritative pronouncements that right to property in view of the Article 300-A of the Constitution of India is a very important human right and no one can be deprived of his/her property, otherwise, than following due procedure of law and it is a recurring cause of action. The petitioner in the present case was dispossessed from their land way back in the year 1978 admittedly, without legal sanction or following the due process of law and yet, no compensation has been paid to the petitioner. Thus, the Union of India is under legal obligation to pay the rental compensation to 16 the petitioner and to initiate the process to formally acquire the land, if they so desire in accordance with law. “

14. In the similar facts and circumstances of this case, the Division Bench of this Court in case titled ***“Chuni Lal Bhagat vs State of J&K & Anr, bearing OWP No. 682/2018, decided on 17.03.2023”*** has been pleased as held as under:

“47. There is no law permitting the deprivation of the property of the citizens, the respondents are either to restore the land to the land owners or pay them the requisite compensation, as no one can be 15 deprived of his Right to Property except in accordance with law in force in the State. The petitioners being small land owners are deprived of their property without payment of any compensation till date. The petitioners are, thus, entitled to payment of compensation as it has resulted in fraction of basic rights of Right to Property as guaranteed under Article-300A of the Constitution of India and are also entitled to use and occupation charges for the same. 48. In view of the aforesaid discussion, these petitions are also allowed. The respondents are directed to initiate the steps for acquiring the land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a period of eight weeks. The Deputy Commissioner concerned shall pay rent for use and occupation of the land of the petitioners” from the date, the respondents have taken possession of the same.”

15. Thus, in the light of the stand taken by the respondents and also in the light of the submission made hereinabove, this Court deems it appropriate to dispose of the instant petition at this stage by directing Deputy Commissioner, Kathua and Deputy Commissioner Samba to immediately disburse the remaining compensation, if any, already deposited by the intending department i.e. Union of India, to the rightful claimants, after proper verification and in accordance with law, in the cases where such compensation has not yet been received by the petitioners or other lawful landowners.

16. It is made clear that in case if the Union of India intend to acquire the land of the petitioners or other stakeholders for the aforesaid purpose permanently, the same shall be done strictly after following due procedure and in accordance with law.

17. The writ petition is, accordingly, ***disposed of*** in the aforesaid terms.

(Wasim Sadiq Nargal)
Judge

Jammu
06.08.2025
Nikhil

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

