

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

Case No.:- WP(C) No. 2273/2023
CM No. 5270/2023

Foji Singh

.....Petitioner(s)

Through: Mr. M.Y. Akhoon, Advocate.

Vs

UT of J&K & Ors

..... Respondent(s)

Through: Mr. Ravinder Gupta, AAG for 1, 3 and 4.
Mrs. Monika Kohli, Sr. AAG with
Ms. Chetna Manhas, Advocate for 2.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
30.09.2025

1. The petitioner, through the medium of the present petition, has sought a direction upon respondent No. 2-Collector Land Acquisition, Doda to re-cast the award dated 25.02.2021 by calculating the compensation in terms of the provisions of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter to be referred to as '**Act of 2013**'). A further direction has been sought upon respondents No. 1, 3 and 4 to release the awarded amount with interest @ 24% to the petitioner.

2. As per case of the petitioner, his land measuring 13 kanals 2 marlas situated in village Malwana along with fruit bearing and non-fruit bearing trees has come under the alignment of road, namely, Tantna to Malwana. It has been submitted that the petitioner and other land holders have been deprived of compensation by the respondents even after completion of construction of road. It has been further submitted that ultimately final award was made by the Collector on 25.02.2021 and in the said award, name of the petitioner figures at serial No. 13 of the apportionment statement. It has been alleged that the respondents have not taken any steps for release of compensation despite representations by the petitioner and other land holders.
3. It has been contended that the award has been passed in terms of the Jammu and Kashmir Land Acquisition Act and not under the Act of 2013 in spite of the fact that the award has been passed after the application of Act of 2013 to Union Territory of Jammu and Kashmir. It has been further contended that in terms of Section 24 of the Act of 2013, once award is not made under the old Act, the compensation has to be determined in accordance with the Act of 2013.
4. Respondent No. 2-Collector Land Acquisition, Doda, in his reply to the writ petition, has submitted that an indent for

acquisition of land measuring 13 kanals 2½ marlas for construction of Tantna to Malwana road in village Malwana was placed by Executive Engineer, PMGSY, Division Doda as confirmed by Chief Engineer, PMGSY, Jammu. Pursuant thereto, Notification under Section 4(1) of State Land Acquisition Act, 1990 BK was issued on 12.02.2013 read with corrigendum dated 03.07.2019 and objections were invited from interested persons. Vide Notification No. 206-REV (LAJ) of 2019 dated 24.10.2019, Notification under Sections 6 and 7 of the State Land Acquisition Act was issued by the Government whereafter Notification under Sections 9 and 9-A of the State Land Acquisition Act was issued on 19.12.2019. The final award came to be passed by the Collector on 25.02.2021.

5. According to the Collector, Indenting Department has been requested a number of times to deposit the awarded amount for its disbursement amongst the interested land owners by addressing repeated communications but the amount of Rs. 41, 32, 886/- in terms of the award has not been deposited by the authorities of PMGSY. It has been contended that the process of acquisition was initiated in the present case while Jammu and Kashmir Land Acquisition Act was in force, as such, the award passed, in terms of the provisions contained in the said Act, is in accordance with law. It has

been submitted that the provisions of Act of 2013 have no application to the present case.

6. The Indenting Department, in its reply to the writ petition, has submitted that grievance of the petitioner has already been redressed as the amount stands deposited with the Collector Land Acquisition, Doda in terms of communication dated 17.09.2024 read with communication dated 01.10.2024. It has further submitted that vide communication dated 04.10.2024, the respondent No. 2-Collector Land Acquisition, Doda has been requested to disburse the amount assessed in favour of the land owners.
7. During the pendency of the writ petition, respondent No. 2-Collector Land Acquisition, Doda has filed a status report pursuant to the direction of this Court, after it was brought to the notice of the Court that the Indenting Department has deposited the amount of compensation with the Respondent No. 2-Collector Land Acquisition, Doda. In the said status report, it has been admitted by the Collector that an amount of Rs. 28.44 lacs stands deposited with his office in terms of communication dated 17.09.2024 of the Indenting Department and a further sum of Rs. 7.12 lacs has been deposited in terms of communication dated 01.10.2024 of the Indenting Department. According to Respondent No. 2-Collector Land

Acquisition, Doda, the petitioner was directed to submit requisite documents, but he failed to do so. It has also been claimed that the petitioner is not entitled to compensation as the land, which is recorded in his favour, is shamlat deh.

8. I have heard learned counsel for the parties and perused record of the case.
9. So far as the contention of the petitioner that compensation has to be assessed and calculated by the Respondent No. 2-Collector Land Acquisition, Doda in accordance with the principles laid down in the Act of 2013 is concerned, the same is not tenable for the reason that in the instant case, the acquisition proceedings were initiated under the Jammu and Kashmir Land Acquisition Act at the time when the said Act was in force. The final award has been passed within two years of issuance of declaration under Section 6 of the Jammu and Kashmir Land Acquisition Act, therefore, the provisions of Section 11-B of the Jammu and Kashmir Land Acquisition Act are not attracted to the present case and the proceedings initiated under the said Act had not lapsed at the time when the award was made by the Respondent No. 2-Collector Land Acquisition, Doda. So far as applicability of Section 24 of the Act of 2013 is concerned, the said issue has already been settled by the Supreme Court in the case of **“Bharat**

Petroleum Corporation Ltd (BPCL) & Ors. Vs. Nisar Ahmed Ganai & Ors", 2022 SCC Online SC 1388 wherein it has been held that the said provision does not have applicability to the acquisition proceedings initiated under the Jammu and Kashmir Land Acquisition Act. In fact, learned counsel for the petitioner, during the course of arguments, has conceded this position of law.

10. That takes us to the question as to whether the stand taken by the Respondent No. 2-Collector Land Acquisition, Doda that because the land belonging to the petitioner is shamlat deh land, therefore, he is not entitled to any compensation, is legally sustainable or not. The said issue has been subject matter of determination before a coordinate bench of this court in the case of **"Kuldeep Raj & Ors Vs. State of J&K and Ors"**, [OWP No. 644 of 2019, decided on 11.02.2022]. This Court, while deliberating upon the aforesaid issue, has observed as under:

14. Thus, before proceeding further in the matter the background, nature and character of the Shamlat-Deh land needs to be traced and looked into. As per the Land Law in Jammu and Kashmir (Revenue Manual) authored by Justice H. Imtiyaz Hussain, in the process of evolution, when the village community system got transformed into the customary family system i.e., the land instead of being owned by the entire community, began to be owned by the families, certain portion of the land were still retained as community property for common use and this community property came to be known

as village common land or Shamilat land [Paras Dewan, Customary law, 269 (1978).]

As per Revenue Manual (supra) the village common land is not one consolidated chunk of land, but it consists of several chunks of land reserved for certain common purposes, as classified in the following land areas:-

(a) Chaupal or hujra, which is used as a place of meeting by village flocks, a place where most of the social and cultural functions are held and where political meetings are arranged;

(b) Shamilat deh, which is used for grazing of the cattle, a place from where the proprietors fetch wood and grass and like things, and which includes all the banjar land of the village;

(c) Gora deh, where cattle, before going to pasturage gather and which area is reserved for the further extension of village dwellings; and

(d) Abadi deh, the inhabited village sites including the land meant for dharamsalas, mosque, emples and gurdwaras, for burning ghats and graveyards, for tanks, wells and ponds, for streets and necessary lanes and by lanes.

Further as per the Manual (supra) as a general rule, only proprietor of the village (malikana-deh) as distinguished from the proprietors of their own holding (malikana-makbuza khud) are entitled to share in the Shamilat-Deh and the rights and incidents of Shamilat land in occupation of a person are the same, as if he is the owner thereof.

15. The proprietary rights over the Shamilat-Deh land of a villager had even been acknowledged, entertained and recognized by this Court from time to time. Reference in this regard to judgment of this Court passed in case titled as Salam Rather and others vs. Mohd. Ganai and others, reported in AIR 1964 J&K 46, would be appropriate and advantageous herein.

Even the question of payment of compensation to the land holders of Shamilat land has been recognized by a Division Bench of this Court in case titled as State of J&K vs. Smt.

Hamida Begum and others, reported in AIR 1979 (J&K) 48, fundamentally, on this principle and premise that the rights and incidents of Shamilat land in occupation of a person are the same as if he is the owner thereof and the said legal position even has been followed by this Court in case titled as Union of India vs. Mst. Freeni Boga, reported in 2004 (II) S.L.J 776, wherein at para 31 following has been laid down:-

“31. Following the view expressed by this Court in these authorities we hold that holder of Shamilat land (which in revenue parlance is known as Shamilat dafa 5) has got the same rights in respect of the land as in the proprietary land and if a portion of Shamilat land comes under acquisition, holder thereof is entitled to its compensation in the same manner as in the case of proprietary land. Argument of the learned counsel for the appellant on this court, therefore, cannot be accepted.”

11. From the foregoing legal position, it is clear that holder of shamlat deh land has got the same right in respect of the land as in respect of proprietary land and if a portion of shamlat deh land is acquired, the holder of the shamlat deh land is entitled to compensation in the same manner as in the case of proprietary land. In the face of this legal position, the contention of the respondent No. 2-Collector Land Acquisition, Doda that compensation cannot be disbursed to the petitioner because the land, which was under his cultivation, happens to be shamlat deh land, is without any substance.

12. It is not in dispute that name of the petitioner figures at serial No. 13 of the apportionment statement annexed to the award dated 25.02.2021 and in the column of owner of the said apportionment statement, the land has been shown as 'shamlat deh'. Therefore, the petitioner is entitled to the compensation that has been assessed in his favour as per the apportionment statement.

13. In view of the above, the writ petition is **disposed of** with a direction to respondent No. 2-Collector Land Acquisition, Doda to disburse the amount of compensation as per the apportionment statement annexed to the award dated 25.02.2021 along with the statutory interest in favour of the petitioner forthwith.



(SANJAY DHAR)
JUDGE

JAMMU
30.09.2025
Naresh/Secy.

Whether order is speaking: Yes

Whether order is reportable: No