

Serial No. 49
Supplementary Causelist I

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

LPAOW No. 20/2017

- 1. Commissioner/Secretary to Government Housing and Urban Development Department, Civil Secretariat Srinagar/Jammu.**
- 2. Director, Urban Local Bodies Kashmir.**
- 3. Executive officer Municipal Committee Kupwara.**

...Appellant(s)

Through: - Mr. Ilyas Nazir Laway, GA

Vs.

- 1. Nazir Ahmad Shah**
- 2. Manzoor Ahmad Shah**
- 3. Ghulam Nabi Shah**

**Sons of Late Ghulam Mohammad Shah
Resident of Dudwan district Kupwara**

- 4. Commissioner/Secretary to Government Revenue Department, Civil Secretariat Srinagar/Jammu.**
- 5. Deputy Commissioner, Kupwara.**
- 6. Collector Additional Commissioner, Kupwara.**

...RESPONDENT(S)

Through:- Mr. Jahangir Iqbal Ganai, Sr. Advocate with
Mr. Owais Majeed Dar, Advocate &
Ms. Mehnaz Rather, Advocate

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**JUDGMENT
24.07.2025.**

Per: Sanjeev Kumar-J: (Oral)

1. This intra-court appeal by the Commissioner Secretary, Housing and Urban Development Department, Government of Jammu and Kashmir and two others, arises out of an order and judgment dated 14th August, 2014, passed by the learned Single Judge of this Court [“the writ Court”] in OWP No. 420/2012 titled **“Nazir Ahmad Shah (Masoodi) & Ors. Vs. State of J&K and Ors.”**, whereby the writ Court has allowed the writ petition filed by respondents 1 to 3 [“contesting respondents”] and quashed the acquisition proceedings initiated vide Notification No. DCK/LA/238/2005 dated 12th February, 2005 and Notification No. 127-RD of 2007 dated 9th August, 2007, with respect to land falling under Khasra Nos. 692, 693, 700, 701 and 702 respectively. The writ Court has also, by a separate order dated 22nd December, 2014, included in the relief, the land measuring 2 Kanals and 18 Marlas falling under Khasra No. 694.

2. Briefly stated, the relevant facts leading to the filing of this appeal are that the contesting respondents claiming to be the owners in possession of land measuring 2 Kanals & 9

Marlas under Khasra No. 692, 2 Kanals & 3 Marlas under Khasra No. 693, 10 Marlas under Khasra No. 700, 5 Marlas under Khasra No. 701 and 1 Kanal under Khasra No. 702, situated at Dudhwan, Kupwara, [“the subject land”], filed OWP No. 420/2012, before the writ Court, seeking *inter alia* a direction to the respondents to de-notify the subject land and restore its possession to the contesting respondents on the ground that the Collector Land Acquisition, concerned had failed to pass an award within the period stipulated under Section 11-B of the Jammu & Kashmir Land Acquisition Act, Smvt. 1990, [“the Act”].

3. The writ petition was contested by the Collector Land Acquisition concerned. It was the stand of the Collector Land Acquisition, that subject land stood already acquired through compulsory mode of acquisition for a public purpose i.e., construction of a Bus Stand at Kupwara, and the compensation thereof stood paid to most of the land owners, as such, the contesting respondents [“the writ petitioners”] had no cause to call in question the acquisition proceedings or to claim that, by efflux of time, the acquisition proceedings had lapsed. That was in a nutshell the stand taken by the Collector Land Acquisition.

4. The writ Court having considered rival contentions and perused the material on record came to the conclusion that the twin conditions governing compulsory acquisition of the

subject land in terms of Section 17 and 17-A of the Act were not complied with and, therefore, the acquisition proceedings had lapsed by operation of Section 11-B of the Act. The fact that in respect of the subject land 80% of the tentative compensation in terms of Sections 17 and 17-A of the Act had not been paid was not disputed by the appellants herein. It was not in dispute that although the Collector Land Acquisition concerned had passed the tentative award, the final award could not be passed within the period stipulated under Section 11-B of the Act. It was on this ground alone that the acquisition proceedings initiated by the Collector Land Acquisition, Kupwara, to acquire the subject land were quashed, leaving it open to the respondents in the writ petition to acquire the subject land for public purpose in strict compliance with the provisions governing the subject. It is this judgment of the writ Court dated 14th August, 2014, which is assailed before us in this appeal.

5. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the view taken by the writ Court, both on questions of fact and law, is correct and does not call for any interference. Learned counsel appearing on both sides fairly conceded to the legal position that the rigors of Section 11-B would not be attracted and the acquisition proceedings

would not lapse if the Collector Land Acquisition concerned has invoked the emergency provisions of Section 17 and 17-A of the Act and has complied with the twin conditions i.e., paid 80% of the tentatively assessed compensation to the interested persons and simultaneously taken possession of the land notified for acquisition. In the instant case, it is though claimed by the appellants that they had invoked the urgency provisions under Section 17 of the Act and taken possession of the subject land, yet it is not disputed that the 80% of the tentative compensation had not been tendered.

6. The plea of Mr. Ilyas Nazir Laway, learned GA appearing for the appellants, that in view of some title dispute with respect to Khasra No. 694, they could not disburse the 80% of the tentative compensation, cannot be accepted for the reason that the language of Section 17-A is quite clear and unequivocal. It provides that in such situations, where there is no rightful recipient available, the compensation is required to be deposited before the Court.

7. In view of the consensus ad idem between the learned counsel for the parties with regard to legal position settled by a three Judge Bench of the Hon'ble Supreme Court in a case titled ***“Delhi Airtech Services Pvt. Ltd and Another Vs. State of U.P and Anotther”, 2022 SCC Online SC 1408***, we need not dwell further on the issue. Suffice it to say that the writ Court correctly concluded that in the

instant case, the acquisition proceedings in respect of the subject land stood lapsed by operation of Section 11-B of the Act.

8. In view of the aforesaid, and as a necessary consequence of the acquisition proceedings having lapsed, and the writ Court has rightly granted liberty to the respondents in the writ petition, including the Collector Land Acquisition concerned, to acquire the subject land for a public purpose in strict compliance with the provisions of law governing the subject. It is, therefore, open to the appellants to acquire the subject land if they require it for a public purpose, or else surrender the possession, if any, with them to the contesting respondents. So far as the order dated 22nd December, 2014, passed by the writ Court is concerned, we are of the considered opinion that the land measuring 2 Kanals and 18 Marlas falling under Khasra No. 694, was not part of the writ petition, nor the documents appended with the writ petition would show that the aforesaid land was owned and possessed by the petitioners. The relief with regard to the land falling under Khasra No. 694 could not have been introduced in the petition after the petition stood disposed of by the judgment dated 14th August, 2014, passed by the writ Court.

9. Since the land measuring 2 Kanals and 18 Marlas falling under Khasra No. 694 was not subject matter of the

writ petition and, therefore, the same could not have been introduced by way of an order passed by the writ Court subsequent to the disposal of the writ petition. We are in agreement with Mr. Ilyas Nazir Laway, learned GA appearing for the appellants, that after passing of the judgment in a case, the Court becomes *functus officio* and, therefore, cannot permit any amendment in the petition and consequently alter a concluded judgment.

10. For the foregoing reasons, the appeal as against the judgment dated 14th August, 2014, passed in OWP No. 420/2012, is found to be without any merit and the same is accordingly **dismissed**. The judgment impugned dated 14th August, 2014, is upheld. However, the appeal as against the order dated 22nd December, 2014, passed subsequently in CMP No. 2305/2014 is allowed, and the said order is **quashed**.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar,
24.07.2025
"Mir Arif"

Whether the judgment is reportable? Yes/No.

Whether the judgment is speaking? Yes/No.