

IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**WP(C) No. 2056/2023**

Ghulam Ahmad Khatana and Ors.

...Petitioner(s)

Through: Mr. Showkat Ahmad Makroo, Sr. Adv, with Mr. Mohammad Amin, Adv.

Vs.

UT of JK and Ors.

...Respondent(s)Through: Ms. Rahila Khan, Assisting Counsel, vice Mr. A.R.Malik, Sr. AAG, for 5 and 6
Mr. Ilyas Nazir Laway, GA, for 1 to 4 and 10**CORAM:****HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.****JUDGMENT****29.07.2025****Oral:****01.** The petitioners, in the instant writ petition, have sought the following reliefs;

- i. *Writ of Mandamus, commanding the respondents to assess and pay compensation the petitioners for the forcible occupation of their land/walnut trees (market value) @ 20.00 lacs per kanal as also compensation for their walnut trees on the basis of their age of trees on the basis of their age of trees with Rs. 200 to 400 per kg for as price of walnuts;*
- ii. *The Court may further be pleased award interest on the compensation @ 18% as per the land acquisition laws or in the alternative;*
- iii. *The Hon'ble court may also be pleased to direct the respondents to initiate criminal prosecution against the erring officers who have felled down the walnut*

trees of the petitioner without adhering to the provisions of Jammu and Kashmir Preservation, Specified Trees Act, 1969 read with Section 38 of the Land Revenue Act.

- iv. The Hon'ble Court may also direct the respondents to produce the record of the case pertaining to land/walnut trees forcibly taken.*
- v. The Hon'ble court may further be pleased to award costs to the tune of Rs. 20.00 lacs in favour of petitioners and against the respondents'*

02. The petitioners have filed the instant petition jointly and have common cause to challenge the action of the respondents, who have taken over the possession of their land forcibly. The petitioners have also called in question the illegal act of respondents in cutting down the fruit bearing (walnut trees) and non-fruit bearing trees without acquiring the land in conformity with law, as they are wholly and solely dependent upon the farming by cultivation of their land, which is the only source of livelihood.

03. The petitioners claim to be the owners in possession of the land falling under Survey Nos' 947,251,223,320,746,743,750,580,579, 758,708,764,332, 730,522, 1021, 951,987,989,302,303,807/232/1, 1065, 400,1065,400 and 1034 situated in village Watkuloo and amongst the above Survey Nos', the land falling under Survey no. 947 measuring 39 Kanals and 13 Marlas is the main land, out of which, the extension/up-gradation of road has been undertaken. The petitioners requested the respondents for payment of compensation regarding their land utilized/occupied for construction of Lolipora-Bangerwani road. The further case of the petitioners is that with a view to process the extension and up-gradation of aforesaid road, the land and trees of the petitioners (fruit bearing and non-fruit bearing trees) came under the up-

gradation/construction of the road mentioned supra and the respondents, without initiating the process for acquisition in terms of the Land Acquisition Act at that point of time and without issuing any notice to the general public and following the mandate of law, have forcibly taken over the possession of the said land. The respondents although, have initiated the process of assessment of compensation for fruit bearing trees, which can be substantiated from a bare perusal of a Communication dated 4th September, 2018.

04. The further case of the petitioners, as pleaded in the writ petition, is that the respondents, without affording an opportunity of being heard to the petitioners, have prepared the assessment of compensation for fruit bearing trees submitted by committee constituted for the same headed by Horticulture Development Officer, District Level Specialists, District Horticulture Officer and, accordingly, the assessment report in that regard was submitted on 13th August, 2018, in which, the names of 40 persons including the petitioners are figuring. It is pleaded in the writ petition that the petitioners were not associated with assessment process and respondents did the same unilaterally, that too without issuing notice to the petitioners. The respondents, as per the petitioners, have failed to follow the procedure as envisaged under law and their trees were cut down without getting any proper sanction from the competent Authority, thus, it is this action on the part of respondents, which has constrained the petitioners to file the instant petition.

05. The petitioners have based their claim on the provisions of Jammu and Kashmir Preservation, Specified Trees Act, 1969, [for short ‘Act of 1969’] and placed reliance on the Jammu and Kashmir Land Revenue Act, which were in vogue at that relevant point of time i.e., when the land of

the petitioners was taken over by the respondents forcibly. It has also been urged by learned counsel for the petitioners that the respondents, without seeking permission from the competent Authority, have cut down the walnut trees of the petitioners, which constitutes an offence in terms of Section 13 of the Act of 1969. Learned counsel further submits that notwithstanding the assessment of the compensation, which too was in violation of Land Revenue Act, and even the respondents have not bothered to disburse the admitted amount. It is submitted that accordingly, the petitioners have represented before the respondents for payment of compensation on account of forcible occupation of their land for Lolipora-Bangerwani Raod as also removal of their walnut trees, but the same did not yield any positive response from the respondents. Feeling aggrieved of the same, the petitioners have approached this Court by way of filing the instant petition.

06. Learned counsel for the petitioners, while arguing the matter, submits that respondents were under legal obligation qua the petitioners to have released the payment of compensation in terms of relevant Act by issuing notice under Land Acquisition Act and could have passed award by associating the petitioners in the process of assessment of compensation and affording them an opportunity of being heard, but the respondents without following due process of law, have taken the land of the petitioners forcibly and even, the fruit bearing and non-bearing trees were cut down, unilaterally.

07. Learned counsel for the petitioners, in support of his contention, has placed reliance upon the Judgment of the Hon'ble Supreme Court dated 8th January, 2020, passed in case ***titled Vidya Devi Vs. State of Himachal***

Pradesh and Ors reported in 2020 Legal Eagle (SC) 17, wherein, at para 10.2, it has been held as under:-

“The right to property ceased to be a fundamental right by the [Constitution \(Forty Fourth Amendment\) Act, 1978](#), however, it continued to be a human right in a welfare State, and a Constitutional right under [Article 300 A](#) of the Constitution. [Article 300 A](#) provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in [Article 300 A](#), can be inferred in that Article. 3 . [The State of West Bengal v. Subodh Gopal Bose and Ors.](#) AIR 1954 SC 92. 2 [Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.](#) (2013) 1 SCC 353. 3 [K T Plantation Pvt. Ltd. v. State of Karnataka](#) (2011) 9 SCC 1. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under [Article 300 A](#) of the Constitution.

08. Learned counsel for the petitioners has also placed reliance upon another Judgment of the Hon’ble Supreme Court dated 11th July, 2022, passed in SUO-MOTU Contempt Petition (Civil) No. 3 of 2021 case titled **Perry Kansagra vs.**reported in 2022 Live Law (SC) 576, wherein, an observation has been made that the tendering of affidavits and undertakings containing false statement would amount to contempt of court and a person, who makes a false statement before the Court and makes an attempt to deceive the Court, interferes with the administration of justice and is guilty of contempt of Court.

09. *Per contra*, the respondents 5,6 and 10 have filed their reply, a perusal whereof, reveals that in the reply filed by the concerned Tehsildar Chrari Shareef, which has also been adopted on behalf respondents 1 to 4 and 7 to 9 as well, there is a clear cut admission on the part of the respondents that for the purpose of up-gradation/widening of aforesaid road, some fruit bearing/non-bearing trees (walnut, apple etc) of the petitioners came under its alignment and were cut down by the PMGSY Department in terms of relevant norms. However, a stand has been taken by the aforesaid Tehsildar that after indent form the PMGSY Department, demarcation of land falling under alignment of the said road was carried out by the then field Agency and up-gradation of the said road was taken up by PMGSY, during which, the proprietary land of the petitioners had come under alignment of said road in village Chalyan Chontinar Tehsil Chrari Shareef and , insofar as the compensation case of the petitioners is concerned, the same has been forwarded to the office of Collector Land Acquisition/Sub Divisional Magistrate Chadoora for further action under Land Acquisition Act.

10. A separate reply has been filed on behalf of the respondents 5 and 6, a perusal whereof, reveals that a contradictory stand has been taken that permission for cutting down the fruit bearing/non-bearing trees [walnut and apple etc.], despite requests, has not been granted by the concerned Authority and pursuant thereto, the intending department did not move further for up-gradation of the road. The further stand taken by the respondents 5 and 6 that no land has been acquired by them and the road has been upgraded to the existing road specification is contrary to record. The allegation of taking over possession of the land of the petitioners

forcibly by the respondents, as pleaded in the instant petition, has been denied by the respondents 5 and 6 in their reply affidavit.

11. From a bare perusal of the record, it transpires that this Court, vide Order dated 3rd January, 2025, directed the respondent no. 4-Collector Land Acquisition Budgam, to proceed in the matter, particularly with regard to the compensation to be assessed and paid with regard to walnut trees as has been made reference by the respondents in para-9 of their reply and in compliance to the aforesaid Order, the Assistant Commissioner, Revenue, Budgam-respondent no. 4 herein has filed a detailed compliance report on 28th July, 2025, in which, it has been submitted that in pursuance to the aforesaid direction, the respondent no. 4 has sought a report regarding the issue in question from the concerned Collector i.e., Sub Divisional Magistrate, [SDM], Chadoora. Accordingly, the report of the SDM, Chadoora, was submitted, a perusal whereof reveals that the office of the Collector has formally issued instructions to the concerned Tehsildar and the Executive Engineer of the concerned department to conduct title verification of all claimants as per revenue record and also furnish the appointment statement, reflecting the right shares, identities of land owners and other requirements. The Collector [SDM, Chadoora], has further reported that as soon as the formalities are completed, the compensation amount will be released. The further stand taken in the compliance report is that due procedure as provided under law and rules governing the subject matter is being followed by the concerned Collector to take the said acquisition to the logical conclusion and, accordingly, more time has been sought with a view to disburse the compensation amongst the rightful owners/petitioners. It is also submitted in the compliance report that the compensation amount will be released

without unnecessary delay once, the procedural requirements are met and relevant reports are submitted.

12. Heard learned counsel for the parties and perused the material on record.

13. Admittedly, the reply filed by the respondents 5, 6, is contradictory to the reply filed by the respondent no. 10, a perusal whereof, reveals that two different stands have been taken by the intending department and revenue department. The respondent no. 10, while filing his reply affidavit, has admitted that the land of the petitioners has been acquired for the purpose of construction of road without following due procedure as envisaged under law and even the factum of cutting down the fruit bearing/non-bearing trees [walnut, apple etc], has not been disputed by the respondent no. 10. On the other hand, the respondents 5 and 6, being the intending department, have submitted that the land of the petitioners was not acquired at all, appears to have taken a contradictory stand by denying the factum of cutting down the trees mentioned supra in absence of valid permission, which was pre-requisite in terms of the Land Revenue Act and was applicable to the case of the petitioners. Thus, the stand taken by the respondent no. 10 has been reiterated in the fresh compliance report filed by the Assistant Commissioner, Revenue, Budgam, who has also assured that due process of law will be followed and the acquisition proceedings will be brought to the logical conclusion and the compensation be paid to the rightful owners after following due process of law, which includes the compensation for cutting down the fruit bearing/non-bearing trees as well. The concerned Collector in the instant case i.e., SDM, Chadoora, has reported that as and when, the formalities in this regard are completed, the compensation amount will be released.

14. Since the factum of acquiring the land of the petitioners and cutting down the trees has been admitted by respondent no. 10 and stood reiterated by the Assistant Commissioner, Revenue as well, while filing the compliance report, therefore, it can safely be concluded that the land of the petitioners was acquired without following due process of law and even the fruit bearing/non-bearing trees, compensation of which, was already assessed, have been cut down without following the norms and seeking proper permission from the competent Authorities. The respondents 5 and 6, while filing their reply, have nowhere mentioned that whether the land of the petitioners has been acquired after following due process of law or not and whether any such permission was ever granted or not for cutting down the aforesaid trees, which were standing on the said land, therefore, the reply of respondents 5 and 6 is contrary to the stand taken by the respondent no. 10 and subsequently, Assistant Commissioner, Revenue, Budgam. Thus, the respondents were under legal obligation to follow the specific norms as prescribed under Land Acquisition Act by issuing notice to the petitioners/landowners and affording them an opportunity of being heard. The respondents instead of doing so, have forcibly taken over the possession of land of the petitioners, which is violative of the Human right of the petitioners in a welfare State and Constitutional right guaranteed under Article 300-A of the Constitution of India. For facility of reference, the Article 300-A reads as under;

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

The plaint reading of the Article suggests that State is empowered to deprive a citizen of his property only by the

authority of law. The law which is validly enacted and is just, fair and reasonable “Save by authority of law”

15. After the Constitution Bench Judgment in *KT Platinum (P) Ltd.*, it can be said to be firmly established that to deprive a citizen of his property, the following pre-requisites must be satisfied.

(i) *There must be a law authorizing the taking of property. The law means validly enacted law which is just, fair and reasonable.*

(ii) *The property must be taken for public purpose else the law providing for deprivation of citizens’ property for a purpose other than public purpose would not be just, fair and reasonable.*

(iii) *Just compensation should be paid for such deprivation. The right to compensation for the property taken over compulsorily is inbuilt in [Article 300A](#). Law providing for no compensation to the citizen for depriving them of their private properties shall be unjust, unfair and unreasonable and thus liable to be struck down as “unconstitutional”.*

16. This Court also in one of the Judgments dated, 20th November, 2024, passed in OWP No. 1081/2014 case titled ***Abdul Majeed Lone vs. Union of India and Ors.*** has dealt with an identical matter. The relevant portion of the Judgment, for facility of reference, is reproduced as under:-

13. *The right to property is now considered to be not only constitutional or statutory right but falls within the realm of human rights. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment etc and over the years, human rights have gained a multifaceted dimension.*

14. *Further, reliance is placed upon the judgment passed by the Division Bench of this Court in case titled “[Shabir Ahmed Yatoo v. UT of J&K](#) bearing WP(C) No. 174/2021,” decided on 30.06.2022, wherein it has been held as under:-*

“5. The aforesaid facts and circumstances clear reveal that the private land of the petitioner has been taken over by the respondents forcibly

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without the consent of the petitioner and without taking recourse to any procedure prescribed in law. It is also an admitted fact that the petitioner has not been paid any compensation in respect of the said land though the determination/assessment of the compensation is under way as per the stamp duty rate.

6. It is well recognized that Right to Property is basic human right which is akin to a fundamental right as guaranteed by [Article 300 A](#) of the Constitution of India and that no one can be deprived of his property other than by following procedure prescribe in law."

15. In the instant case, there are contradictory stands taken by the respondents. The mandate of law, as such, has been observed by the respondents in complete breach. Admittedly, all the petitioners have become entitled to the payment of compensation for the land and the trees which were standing thereon with effect from the date the possession of the subject land has been taken over by the respondents for construction of road mentioned supra. The respondents cannot run away from their liability to compensate the citizens, who have been deprived of their land and the fruit bearing/non-bearing, which were cut down for the aforesaid purpose and the petitioners have yet not received the compensation payable to them.

16. In view of the stand taken by the respondent no. 10 [Tehsildar, Chrari Sharief, District Budgam], in his compliance report filed in pursuance to the Order dated 3rd January, 2025 and respondent no. 4 Assistant Commissioner, Budgam, this Court finds merit in the instant petition and the same is, accordingly, allowed. The respondents are directed to complete the entire process of acquisition within a period of two months from today and pay compensation to the rightful owners, which may include the petitioners, in accordance with law and as per the observations made hereinabove after getting due verification from the competent Authority with regard to the subject land taken over by them and allied fruit bearing/non-bearing trees [walnut, apple, etc], which were cut down for

construction of Lolipora-Bangerwani road. The respondents, while doing this entire exercise, shall ensure that petitioners are associated in the process of acquisition and assessment of compensation by affording them an opportunity of being heard. In the event, if any material record may be required for disbursement of compensation with regard to the subject land and trees, the petitioners shall be at liberty to produce such record before the competent Authority

17. Disposed of along with connected CM(s).

SRINAGAR:
29.07.2025
"Shamim Dar"

