

S.No.6

Regular List

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

WP(C) 2533/2019

1. Abdul Majeed Khan S/O Gui Mohammad Khan ...Petitioner(s)/Appellant(s)
aged 70 Years
2. Mushtaq Ahmad Khan S/C Gui Mohammad
Khan, aged 45 Years
3. Fayaz Ahmad Khan S/O Gul Mohammad Khan
aged 40 years, all residents of Sunbrari Tehsil
Kokernag District
Anantnag

Through: Mr. Ahmad Javed, Advocate vice
Mr.Molvi Aijaz, Advocate

Vs.

1. State of Jammu and Kashmir through Chief
Secretary to the Government of J & K, Civil
Secretariat Srinagar ...Respondent(s)
2. Commissioner/Secretary to the Government
of J & K Department of Revenue, Civil
Secretariat Srinagar
3. Financial Commissioner Old Secretariat
Revenue
Department Srinagar
4. Divisional Commissioner Kashmir Srinagar.
5. Deputy Commissioner/District Magistrate
Anantnag
6. Sub-Divisional Magistrate (SDM)
Kokernag, District
Anantnag.
7. Tehsildar Kokernag District Anantnag.
8. Naib Tehsildar Wandevalgam Kokernag
District Anantnag
9. Patwari Sun Bran Kokernag Anantnag.
10. Chowkidar Sunbrari Anantnag namely
GhulamHassan Dar s/ o Ghulam Mohammad
Dar R/o Takia Magam
Kokernag District Anantnag Kashmir
11. Senior Supt of Police District Anantnag
12. SHO Police Station Kokernag Anantnag
Kashmir

Through: Mr.Faheem Nisar Shah, GA

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

Judgment (oral)

23-07-2025

1. The petitioners through the medium of the present petition, filed under Article 226 of the Constitution of India, seek the following relief(s):

- i. Mandamus: commanding the respondents 01-05 to initiate a departmental action against the respondents 06-11 for having misused their official position and by colorable exercise of power violated the fundamental rights of the petitioners, deprived them of the possession of some of the proprietary land under number the Khasra 926 to the extent of one canal and seven Marla's situated at Sunbrari Kokernag Anantnag and having cut and fell down 30 number of poplar and Bren trees besides 04 numbers of Walnut trees which used to give an income of Rs. 50,000 yearly to the petitioners.
- ii. The honourable court be pleased to direct the respondents to restore back the possession of the said land to the petitioners and besides a compensation of four lakhs to the petitioners.
- iii. The honourable court be further pleased to direct the respondent 04 & 12 to Lodge and FIR against respondents 06-11 under the relevant provisions of law. The honourable court be further pleased to grant any other writ order or direction, which this honorable court deems fit proper and convenient in the present peculiar circumstances of the case, though not specifically prayed for for which act the petitioners shall ever remain grateful.

2. The brief facts of the case as stated in the petition, are that the petitioners are the owners in possession of land measuring 04 Kanals, situated at Sunbrari, Tehsil Kokernag, under Khasra No. 926. The petitioners are real brothers and the sons of Gul Mohammad S/O Sumandar Khan, in whose name the said land was duly mutated. The petitioners had cultivated the said land with poplar and Bren trees (about 30 in number), along with two mature walnut trees-each

yielding approximately 4000-5000 walnuts per season-and two smaller walnut trees which were about 10 years old.

3. It is stated that on 18.04.2019, respondents Nos. 6 to 11 allegedly arrested the petitioners without any justification and kept them in the wrongful confinement of respondent No. 11. During this period, these respondents reportedly entered the said land and felled all the trees, including the walnut trees, without any legal authority, in blatant violation of the law and established procedures. It is further stated that the petitioners were released only after this act had been completed.
4. The petitioners assert that the respondents failed to follow the due process of law in cutting down the trees and further claim that they were unlawfully deprived of their proprietary land, thereby violating their fundamental rights and settled legal principles.
5. This Court, by order dated 27.11.2019, after hearing learned counsel for the petitioners, issued notice to the respondents and directed respondent No. 4, Divisional Commissioner, Kashmir, to constitute a team of officers to conduct an enquiry into the matter and to submit a report.
6. In compliance with the said directions, respondent No. 4 submitted a status report, wherein it was stated that a committee was constituted pursuant to order No. DivCom/RA-MVS/104/2019 dated 07.01.2020. The committee visited the site in village Sunbrari (estate Kokernag) on 17.01.2023. It was reported that the land in question is recorded in the name of the Panchayat and not as proprietary land, and that, as per local input, the land has been used as a graveyard for

a long time, leading to the encroachment removal drive carried out by the then Tehsildar on 01.05.2019, based on a field report.

7. It is further stated in the report that the claim made by the petitioners regarding the felling of 30 trees including two large walnut trees does not align with the ground reality. The report of the Chief Horticulture Officer, vide No. CHO/ANG/Dev/10382-83 dated 27.01.2023, mentions that only one stump-approximately 15–16 years old-was found at the site. Moreover, a video clip of the encroachment drive was reviewed, and no evidence was found indicating that such large walnut trees were cut during the brief operation conducted by the then Tehsildar, Kokernag.
8. The respondents have filed a detailed reply, wherein it is asserted that the petitioners are not the owners in possession of land measuring 04 Kanals, as claimed. It is submitted that the land in question pertains to Survey No. 926 min, situated in estate Nallah Sundbran, which in total measures 08 Kanals and 02 Marlas. Out of this, only 03 Kanals stand recorded in the name of the petitioners' father, Gull Mohammad S/o Samander Khan. Furthermore, 02 Kanals are recorded as Ghairmumkin Panchayat Ghar under the cultivation column, while the remaining 03 Kanals and 02 Marlas are recorded as proprietary land in the name of Ama S/o Shair Ali Khan.
9. It is further contended that the petitioners have unlawfully encroached upon 02 Kanals of land recorded in the name of Panchayat Ghar. The said Panchayat Ghar structure had been gutted long ago, and the said portion of land has, since time immemorial,

been used as a graveyard. The petitioners, after encroaching upon this land, allegedly made attempts to cultivate cattle fodder. It is stated that around two years ago, the petitioners planted 04 poplar trees, 01 non-fruit bearing walnut sapling, 03 Bren trees, and 02 Keekar trees on this encroached land. The walnut tree mentioned was merely a sapling, incapable of yielding any revenue, and the said plantation appears to be a pretext for asserting unlawful possession over the graveyard land.

10. Heard and perused the record.

11. As per the stand taken by the respondents, the petitioners are not the owners in possession of land measuring 04 Kanals, as claimed. The land in question pertains to Survey No. 926 min, situated in estate Nallah Sundbran, which, in total, measures 08 Kanals and 02 Marlas. Out of this, only 03 Kanals stand recorded in the name of the petitioners' father, Gull Mohammad S/o Samander Khan. Further, 02 Kanals are recorded as Ghairmumkin Panchayat Ghar under the cultivation column, while the remaining 03 Kanals and 02 Marlas are recorded as proprietary land in the name of Ama S/o Shair Ali Khan.

12. As per the stand of the respondents and after examination of the revenue record, it has come to fore that the petitioners have unlawfully encroached upon 02 Kanals of land recorded in the name of the Panchayat Ghar. The said Panchayat Ghar structure had been gutted long ago, and the land has been used as a graveyard. After encroaching upon this land, the petitioners allegedly attempted to cultivate cattle fodder, and approximately two years ago, planted 04

poplar trees, 01 non-fruit-bearing walnut sapling, 03 Bren trees, and 02 Keekar trees on the said encroached portion.

13. In view of the categorical stand taken by the respondents in their reply, as well as the findings recorded in the report submitted by the enquiry committee constituted in compliance to the Court's order dated 27.11.2019, the stand taken by the petitioners is contrary to record and the relief prayed in the instant petition cannot be granted to the petitioners as the petitioners are not the owners of the land and this petition is by way of camouflage by applying pressure tactics to legalize their action of encroaching the land in question and also seeking compensation for cutting of trees. Moreover, it is borne from the record that the petitioners have encroached upon the land in question and this Court while adjudication writ jurisdiction under Article 226 of the Constitution of India cannot go into the disputed question of fact and decide the title of the petitioners in the instant petition and release of the compensation would be only in the eventuality if the petitioners happen to be the actual owners of the land.

14. Furthermore, the material on record clearly indicates that the petitioners have encroached upon the land, part of which is recorded in the revenue records as Panchayat Ghar/Graveyard. This Court, while exercising writ jurisdiction under Article 226 of the Constitution of India, cannot adjudicate disputed questions of fact, including issues relating to title and ownership, which require detailed evidence and examination. Consequently, the prayer for

compensation also cannot be entertained in the absence of any established legal right or title.

15. In view of the observations made hereinabove, this Court is of the opinion that the instant writ petition is devoid of any merit and deserves to be dismissed. Accordingly, the writ petition is **dismissed**, along with the connected CM(s),

16. However, it is made clear that the petitioners shall be at liberty to challenge the findings of the committee constituted pursuant to this Court's order dated 27.11.2019, before an appropriate forum, in accordance with law, if so advised.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:

23-07-2025

Mubashir