

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

**WP(C) 2370/2023
CM(5574/2023)
CM(5575/2023)**

**Gulzar Ahmad Sheikh Aged 63 years
S/O Habib-Ullah Sheikh
R/O Shopian, Kashmir**

...Appellant(s)/Petitioner(s)

Through: Mr. Faizan Majeed, Advocate

Vs.

- 01. Union Territory of Jammu and Kashmir
through Chief Secretary to Government
Revenue Department Civil Secretariat,
Srinagar/Jammu.**
- 02. Commissioner Cum Secretary to
Government of J&K, Home Department,
Civil Secretariat, Srinagar/Jammu.**
- 03. Director General of Police, J&K, Police
Headquarters, Peerbagh, Srinagar.**
- 04. Deputy Commissioner, Shopian.**
- 05. Additional Deputy Commissioner,
Shopian.**
- 06. Tehsildar Shopian.**

...Respondent(s)

Through: Mr. Alla ud Din Ganie, AAG

CORAM:

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

JUDGMENT (ORAL)

1. The petitioner through the medium of the instant petition has called in question order dated 20.06.2023, by virtue of which, vide Government Order No. 30-Rev(S) of 2019 dated 05.03.2019, sanction has been accorded to the transfer of State Land measuring 02 Kanal falling under Khasra No. 259/1/191 Min, situated at Chowgam, Tehsil Shopian in favour of Home Department for the construction of Guest

House with the following terms and conditions, which, for facility of reference, are reproduced as under:

- 1. The land shall be used only for the purpose for which the sanction of transfer has been accorded.*
 - 2. That the transfer of land shall be subject to the condition that prior approval to the execution of project is obtained by the indenting department from its competent authority.*
 - 3. That the transfer of land is subject to the adherence of such other provision of law related to Revenue/Forest/Housing & Urban Development Department/J&K Water Resources(Regulation and Management) Act, 2010 etc.*
 - 4. That there is no violation of Hon'ble Green Tribunal directions in this regard.*
 - 5. That the land is free from all encumbrances and in circumstances where there is any dispute due to any reason, the case shall be submitted to higher authorities for consideration.*
 - 6. In case the land in question shall not be utilized for the project and remains vacant for more than 03 years, the sanction shall be deemed rescinded.*
 - 7. That the land shall be fenced by the Indenting Department to prevent any further encroachment.*
 - 8. The land shall be put to use after obtaining all other permissions as may be required for the construction from the competent authority.*
 - 9. That the transferee shall not divert any water/irrigation/flood channel on spot.*
 - 10. The land is purely a State Land and free from any mining activity or any other activity.*
2. The main plank of argument on behalf of the petitioner is that, he is the absolute owner in possession of the land measuring 01 Kanal and 16 Marlas situated at Chowgam Tehsil Shopian and the said land falls under Khasra No. 259/1/191 Min and Khewat No. 36. It is the specific case of

the petitioner that the said land actually is a part and parcel of land situated in Halqa Padpawan and Chawgam of District Shopian. According to the petitioner, the said land has been in the possession of their forefathers from times immemorable and at-least from 1920, when it was being used for cultivation by the ancestors of the petitioner and the said land covers various Survey numbers and Khasra numbers and was jointly possessed by various parties. i.e co-sharers namely one Abdul Khaliq Bhat on one hand, Aziz and Habib on the other hand. A Dispute also arose between the said parties regarding demarcation of the said land and the same dispute landed in a Civil Court and was finally settled and accordingly, the Civil Court passed a decree providing for partition by metes and bounds by the parties of the said landed estate. The petitioner being one of the sons of the above mentioned Habib was given possession of 01 Kanal 16 Marlas of land out the said chunk of land and the land has remained in actual physical occupation of the petitioner for decades and a residential house was also built therein in 1950's, in which the petitioner was residing along with his family, however, after 1990's, the petitioner had started living elsewhere because of law and order situation, which resulted in the said house turning into debris, which is still existing on spot.

3. It is the specific case of the petitioner that he has inherited the said land measuring 01 Kanal 16 Marlas from his ancestors who were in actual physical possession of the said

land for decades before 1950, which according to the petitioner has been authenticated by the revenue records. It has also been urged through the medium of the instant petition that time and again, the respondent authority has been requested to attest the mutation in his favour by declaring him the owner of the said land in terms of Order issued by the Government in 1966, as the petitioner was to be declared as a prospective owner of the land in question, in terms of LB-6. The needful was not done and the claim of the petitioner was kept pending.

4. The further case of the petitioner is that in the year 2001, the then State Government passed the J&K States Lands (Vesting of Ownership to Occupants) Act of 2001, thereby conferring ownership rights on persons who are in possession of the State Land and the petitioner was also assured by the respondents that the mutation will be attested in his favour under the said Act, which did not happen and hence the instant petition has been preferred.
5. Feeling aggrieved of the inaction on part of the respondents, the petitioner was constrained to approach this Court through the medium of the writ petition, bearing No. OWP 1204/2015, which was disposed of by directing the respondents to consider the claim of the petitioner and take a decision within four weeks on the strength of the order dated 10.07.2015, which has been placed on record with the instant petition. Even the aforesaid direction passed by the Court, according to the petitioner, was not implemented. In

the meantime, it is a matter of fact that the Roshni Act came to be challenged before this Court, which was declared as ultra vires to the constitution, because of which all pending claims under the said Act have also become nullity in the eyes of law. In light of the judgment passed by the Hon'ble Division Bench, the petitioner was also informed that his case cannot be settled under the Roshni Act, because the same was struck as ultra vires by the Hon'ble Division Bench of this Court and the petitioner thereafter projected his grievance in terms of LB-6 for conferment of such rights, being the owner of the said land.

6. It is a specific case of the petitioner that the petitioner has a vested right of ownership over the land measuring 01 Kanal 16 Marlas, which by no stretch of imagination can be transferred to any Government Department without following due process of law. Merely that mutation under LB-6 was not attested in favour of the petitioner, it cannot be construed that the petitioner is not to be treated as the owner of the said land, because mutation is a procedural formality and non-attestation of the same cannot affect the substantiate right of the petitioner.
7. Lastly, it has been submitted that the petitioner has filed a detailed representation to the Deputy Commissioner concerned, whereby, the entire position was explained and no action was taken and thus the instant petition has been preferred.

8. Per contra, reply has been filed on behalf of respondent No 4, which Mr. Alla ud Din Ganai, learned AAG appearing on behalf of respondent 1-6 adopts for rest of the respondents as well. His statement is taken on record.
9. The respondents have taken a specific stand by way of preliminary objection, that the petitioner is guilty of concealment and suppression of material facts from this Court and therefore, the writ petition as such deserves dismissal. The contention of the petitioner, that he has the vested ownership right over the land in question and the respondents are interfering his proprietary land is grossly misconceived, which is without any foundation and specifically denied. It is the specific stand of the respondents that the order for transfer of land by virtue of the order impugned to the Home Department has been issued with regard to the State Land falling under Survey No. 259/1/191 Min situated at village Chowgam.
10. The respondents have also relied upon the reports furnished by the field agency, which provides that the land measuring 7 Kanal falling under Khasra no.-Min 259/1/191 situated at village Chowgam has been recorded as State Land as per Jamabandi 1969-70 and no mutation has been attested in favour of the petitioner or his ancestors for the land in question in the revenue records, which aspect of the matter has also been admitted by the petitioner.
11. Thus, as per the stand of the respondents, the claim of the petitioner for being absolute owner of the land in question is

baseless. It has also been pleaded in the reply in which the affidavit has been sworn by the Deputy Commissioner Shopian that out of the said survey No, land measuring 1 Kanal and 01 Marla has been transferred to the Department of Weights and Measurements vide Mutation No. 328. The respondents while filing the reply affidavit have also clarified that the dispute between the parties/co-sharers has not been in respect of the suit land but for the land measuring 10 Kanals falling under Survey No. 2383/1086 situated in revenue estate Heerpora and the decree passed by the Civil Court which has been relied upon, has been with respect of the land falling under Survey No. 2383/1086 and not in respect of the land in question falling under Survey No. 259/1/191 situated in revenue village estate Chowgam.

12. The respondents have taken a specific stand relying upon the revenue record and Jamabandi of 1968-69 that the land measuring 7 Kanals falling under Survey No. 259/1/191 situated at village Chowgam Tehsil Shopian recorded as Sarkar doulatmadar (State Land) in the proprietary column, which was in illegal possession of Aziz and others including the petitioners. It has also been the specific stand of the respondents that the Roshni Act has been repealed and has been declared null and void by the Jammu and Kashmir Government in compliance to the order passed by this Hon'ble Court in PIL No. 19/2011 and as a necessary corollary all the mutations attested under the said Act have

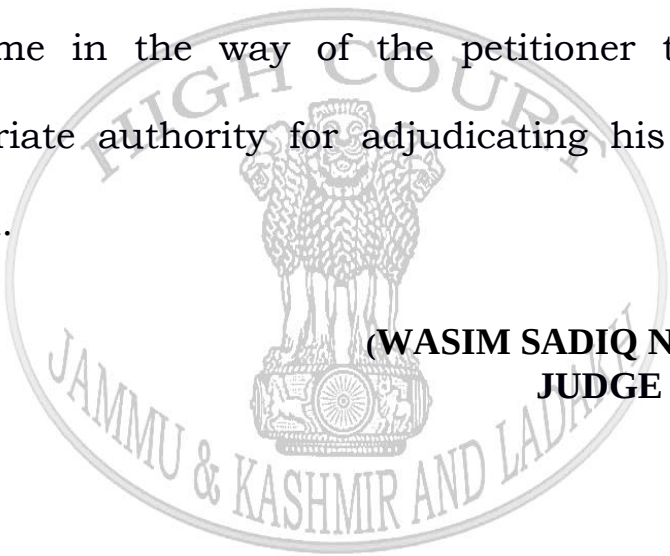
been cancelled and the said land has already been retrieved from the illegal occupants on the strength of aforesaid order.

13. The respondents have also submitted that even if , the mutation had been attested in favour of the petitioner under the provision of aforesaid Act, that would also have been cancelled in conformity with the direction passed by the Hon'ble Division Bench of this Court mentioned supra. Thus, according to the respondents the land in question has been transferred to the Home Department for construction of a police guest house after following due procedure, as prescribed under law. As per the respondents, the petitioner has illegally and unlawfully encroached upon the said land and thus, the plea raised by the petitioner challenging the order impugned is not tenable in the eyes of law and the writ petition filed is devoid of merit and deserves dismissal.
14. Heard learned counsel for the parties at length and perused the record.
15. On examination of the record, it reveals that the claim of the petitioner is not substantiated, with regard to the ownership of the land in question, as no mutation with respect to the land occupied by him has been attested in his favour. The record further reveals that the land measuring 2 Kanals falling under Khasra No. 259/1/191 Min situated at Chowgam Tehsil Shopian is recorded as State Land and has been transferred to Home Department for the construction of Guest House.

16. On a careful consideration of the record and the submissions made, it becomes clear that the petitioner has not been able to establish any lawful ownership over the land in question. The civil court decree referred to by the petitioner does not pertain to the land under Khasra No. 259/1/191-Min situated at Chowgam, but to another land located in a different village. The revenue records clearly show that the land in question is recorded as State Land and no mutation stands attested in favour of the petitioner or his ancestors. Mere possession of State Land, even if it has continued for a long time, does not create any ownership right in law.
17. The petitioner's reliance on the Roshni Act and LB-6 Order of 1966 is also misplaced. The Roshni Act was declared unconstitutional by a Division Bench of this Court in PIL No. 19/2011, and all proceedings under the said Act were held to be void. Therefore, even if any claim was pending under the Roshni Act, it no longer survives. Similarly, the non-attestation of mutation under LB-6 does not help the petitioner, as no legal right flows without a valid mutation or title. A mere expectation or claim does not amount to ownership, particularly in respect of State land.
18. This Court is also of the view that the land has been transferred to the Home Department for construction of a police guest house in public interest, and such transfer has been made in accordance with law. The petitioner, having no lawful title or recognized right over the land, cannot

challenge the said transfer. The writ jurisdiction of this Court under Article 226 cannot be invoked for protecting unauthorized occupation of State Land. The law does not permit such possession to be regularized or protected in the absence of any statutory right.

19. In view of the observations made and discussion above and in light of the stand taken by the respondents, the writ petition is found to be without any merit and the same is accordingly **dismissed**.
20. It is made clear that the dismissal of the writ petition shall not come in the way of the petitioner to approach the appropriate authority for adjudicating his grievance, if so advised.



(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
11.07.2025
“Adil Ismail”

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| ❖ Whether the Judgment is Reportable? | Yes/No. |
| ❖ Whether the Judgment is Speaking? | Yes/No |