

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

WP(C) No.101/2022

1. **Mohd. Bashir age 72 years** Petitioner/Appellant(s)
S/o Abdul Rehman.
2. **Tobia Akhtar age 20 years.**
3. **Sadia Akhtar age 17 years.**
4. **Muskan Akhtar age 15 years**
Daughters of Ltd. Mohd
Ramzan through her sister
Tobia Akhtar petitioner No.2
5. **Mohd. Imran age 13 years**
S/o Ltd. Mohd Ramzan
(petitioners No.3,4 and 5
through their sister Tobia
Akhtar petitioner no.2)
6. **Jamila Akhtar age 55 years**
w/o Ltd. Mohd. Kabir
All residents of village
Badakana Tehsil
Thannamandi District
Rajouri.

Through: Mr. Sahil Sharma, Advocate

Vs

1. **Union Territory of J&K, through**
Commissioner/Secretary
Department of Rural Development
Department, J&K Government,
Civil Secretariat,
Jammu/Srinagar.
2. **Commissioner/Secretary R&B**
Department, J&K Government,
Civil Secretariat,
Jammu/Srinagar.
3. **Chief Engineer, R&B Department,**
Jammu.
4. **Director, Rural Development**
Department, Jammu.
5. **District Development**
Commissioner (Deputy
Commissioner), Rajouri.
6. **Assistant Commissioner**
Development, Rajouri.
7. **Block Development Officer,**
Palanger, Tehsil Thanamandi,
Rajouri.

8. **Executive Engineer, R&B,
Rajouri.**
9. **S.H.O. Police Station,
Thanamandi, Rajouri (now
deleted)**
10. **Custodian Evacuee Property,
Jammu.**

..... Respondent(s)

Through: Ms. Jagmeet Kour, Advocate vice
Mr. Raman Sharma, AAG for R-1, 4, 6 & 7.
Mr. Ravinder Gupta, AAG for R-2, 3 & 8.
Ms. Priyanka Bhat, Assisting Counsel to
Mrs. Monika Kohli, Sr. AAG for R-5.
None for others.

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

JUDGMENT (ORAL)

13.07.2026

1. As per the note of the Registry, notices issued to the respondent Nos.12 to 15 through registered post on 23.04.2025 have not been received back served or unserved. Statutory period is over. No one has caused appearance on their behalf. They are, accordingly, set ex-parte.

2. Mr. Ravinder Gupta, learned AAG appearing on behalf of the respondent Nos.2, 3 & 8 fairly submits that the said respondents have been inadvertently arrayed as party respondents in the present petition. He, therefore, prays that respondent Nos.2, 3 & 8 be struck off from the array of the respondents. His statement is taken on record, which is not objected by the learned counsel for the petitioners. Accordingly, respondent Nos.2, 3 & 8 are struck off from the array of respondents as they are not necessary parties.

3. The instant writ petition has been filed under Article 226 of the Constitution of India, whereby the petitioners seek issuance of the following reliefs:-

- a. A writ of Mandamus directing the respondent Nos.1 to 8 not to construct road without adopting the due course of law and acquiring the land bearing Khasra No.352 measuring 27 Kanals 18 Marlas situated at village Badakana Tehsil Thannamandi Rajouri on the instance of private respondents.*
- b. A writ of Mandamus directing the official respondents to protect the land bearing Khasra No.352 measuring 27 Kanals 18 Marlas situated at village Badakana tehsil Thannamandi in its original shape and not to convert for any other purpose than agriculture, land being Brayal Abal and also not to damage in any manner the house of the petitioners.*

4. The facts, which emerge from the filing of this petition are that the petitioners are in continuous cultivating possession of land bearing Khasra No.352 measuring 27 Kanals and 18 marlas, at village BadaKana, Tehsil Thannamandi, District Rajouri. It is averred that prior to the petitioners, their ancestors have remained in possession and cultivation of the aforesaid land since time immemorial. According to the petitioners, the land is recorded as *Shamlat Deh* and was initially entered in the revenue records in the name of one Nabu as a cultivating share-holder, who migrated to Pakistan in the year 1965. Upon his migration, a portion of the land was allotted to Shah Mohd and Mohd Alam, sons of Roshan Din, residents of Panjgrain. However, upon the government discovering that the said land allottees were suspects and had been sent back to the border area, the allotment was withdrawn.

5. It is further averred that, under the Depopulation Scheme, the aforesaid land was restored in favour of Abdul Rehman, S/o Sunju Kashmiri (the predecessor-in-interest of the petitioners) by way of symbolic delivery of possession through proclamation, digging and ploughing, which was duly recorded vide Order No. 171/AC dated 7-6-1968 passed by the Tehsildar, Rajouri, in respect

of khasra No. 352 measuring 27 kanal 18 marlas. Although the ownership column of the revenue record reflects the land as *Shamlat Deh*, yet the petitioners claim that being the legal heirs and successors of Abdul Rehman, they have stepped into his shoes and are entitled to all rights flowing from such possession. It is further pleaded that Abdul Rehman was the father of petitioner No.1, the father-in-law of petitioner No.6 and the grandfather of petitioner Nos.2 to 5. The petitioners assert that they have remained in uninterrupted possession and cultivation of the land as well as the residential house situated thereon, which is reflected in the revenue records including the latest Khasra Girdawari for kharif 2021.

6. It is the specific case of the petitioners that respondent Nos.2 & 3 had constructed a road through a portion of their land approximately ten years ago by assuring them that they would be duly compensated and that appropriate arrangements would be made for the flow of water from the road towards their agricultural land. According to the petitioners, the said construction resulted in the utilization of approximately 2 kanal of their agricultural land for the purpose of a link road, leading to **mohalla** Javed Ahmed.

7. The petitioners further allege that the private respondents, in connivance with the respondents Nos. 6 and 7 and at the behest of respondent no. 11, who was formerly the Sarpanch and is presently a member of the Panchyat, subsequently constructed another road connecting the main road to Thannamndi through the land of the petitioners, thereby occupying more than 01 Kanal of land without following the due process of law or acquiring the same in accordance with law. It is pleaded that the petitioners brought the matter to the notice of respondent No. 10 by way of an application dated 04-11-2020. It is further alleged that, during construction of the said road, debris was dumped upon the petitioners' land and no retaining wall,

cross-drainage or other protective measures were provided, resulting in damage to their agricultural land.

8. In support of their case, the petitioners have placed reliance upon a communication dated 04.11.2020 issued by respondent No.10, namely, the Deputy Custodian Evacuee Property, Jammu, whereby the Tehsildar, Thannamandi, was directed to prevent encroachment and trespass over the land in question and to take appropriate action against the persons responsible. It has also been pleaded that respondent No. 10 vide communication dated 18-02-2021, requested respondent No.9-SHO, Police Station, Thanamandi Rajouri to register an FIR against the private respondents. However, as no action was allegedly taken pursuant thereto, the petitioners were constrained to institute the present writ petition. The record further reveals that respondent No.9 has since been deleted from the array of respondents. It has also been alleged that private respondent No.12 and the father of respondent Nos.13 & 14 are attempting to encroach upon the petitioners' land. In this regard, the petitioners claim to have approached the Custodian General, who is stated to have directed that the un-authorized occupation of the land be regularized by granting a lease in favour of the petitioners for a period of 40 years.

9. The petitioners further contend that the respondents have no authority in law to interfere with their possession or make use of the land in question without following the due process of law including acquisition of the land, wherever so required, in accordance with the applicable statutory provisions.

10. *Reply* has been filed on behalf of the respondent Nos. 2, 3 & 8, wherein a specific objection has been taken by the respondents, controverting the averments made by the petitioners. The stand taken by the said respondents, particularly in

Paragraph No. 2 of the objections, substantially refutes the case set up by the petitioners. The said Paragraph No. 2 of the objections is reproduced hereunder:-

“That in response to the relevant Para’s sought for by the petitioners and related contentions/assertions made in Para’s of the writ petition. It is respectfully submitted that as per the record of the office of Executive Engineer, PWD (R&B) Division Rajouri, no such, road was/is being constructed by Public Work Department and the road mentioned in the writ petition pertains to REW i.e., Rural Development Department. The petitioners have wrongly arrayed the answering respondents as party respondents in the writ petition and no cause of action has accrued against the answering respondents.”

11. In addition to the above, a separate reply has been filed on behalf of the respondent No.5. In paragraph 6 of the said reply, respondent No.5 has taken the following stand, which is reproduced hereunder:-

“That a detailed report in the matter was sought from Tehsildar Thannamandi who vide his office No. PS/TMD/94 dated 25.08.2023 reported that he along with revenue filed staff visited the spot and found that a road constructed by Public Works Department is Thannamandi who vide his office No. PS/TMD/94 dated 25.08.2023 reported that he along with revenue filed staff visited the spot and found that a road constructed by Public Works Department is passing through the aforementioned Khasra Number which as stated by the petitioner in this Para has been constructed more than 10 years back and the land occupied by the said road is measuring 01 Kanal and 07 Marlas. Further, a tractor road measuring 09 Marlas has been found constructed by private persons and not by the governmental agencies and also, a third road measuring 08 Marlas has been found to be constructed by the private persons and not by the Government department (s). Rest of the area is under the possession of Mohammad Bashir Shawl, Mohammad Ramzan Shawl sons of Abdul Rehman and Mst Jamila Begum Wd/o Mohd

Kabir. The report of Tehsildar Thannamandi dated 25.08.2023 along with Sketch depicting the roads and rest of the area.”

12. A detailed reply has also been filed on behalf of respondent Nos. 1, 4, 6 & 7, wherein the said respondents have controverted the averments made by the petitioners. It has been specifically pleaded that the allegation of the petitioners that the said respondents are in the process of constructing another road connecting the main road to Thannamandi through the land of the petitioners, is factually incorrect and misconceived. It has been stated that neither any such road has been constructed by the said respondents nor there is any proposal for undertaking construction of any road through the land belonging to the petitioners.

13. The aforesaid stand has further been substantiated by the report of the Village Level Worker (VLW), wherein it has been reported that no such construction has been carried out by the said respondents over the land of the petitioners. The said respondents have also categorically denied the allegations of interference with or encroachment upon the land of the petitioners, as alleged in the present writ petition.

14. The record further reveals that a separate reply has been filed on behalf of respondent Nos. 10 and 11, wherein the said respondents have taken a specific stand that the land in question measuring 27 Kanals and 18 Marlas, falling under Khasra No. 352 situated at Village Badakana, Tehsil Thannamandi, District Rajouri, was found to be under unauthorized possession of the petitioners. It has been pleaded that after following the due process of law, the said land was allotted in favour of the petitioners by the Custodian General, Evacuee Property, J&K Government vide order dated 01.01.2015 for agricultural purposes, subject to payment of the requisite premium and rent.

15. It has further been submitted that the alleged illegal interference by certain persons over a portion of the aforesaid evacuee land including the alleged construction of a road without following due process of law, was brought to the notice of the Deputy Custodian concerned, who, in turn, took up the matter with the Revenue and Police authorities for ensuring protection of the said evacuee land. It has been further stated that insofar as the Evacuee Property Department is concerned, it has no role to play in respect of the issues raised in the present writ petition.

16. The said respondents have also categorically denied the averments and allegations made by the petitioners and have asserted that the case projected by the petitioners in the present writ petition is factually incorrect and devoid of merit.

17. Heard learned counsel appearing for the petitioners as well as learned counsel representing the respondents and perused the record of the case with due consideration. With the consent of the learned counsel for the parties, the instant petition is taken up for disposal.

18. A perusal of the pleadings on record reveals that the petitioners, through the medium of the present writ petition, have raised disputed questions of fact, which cannot be adjudicated upon while exercising the extraordinary writ jurisdiction under Article 226 of the Constitution of India. Consequently, the present writ petition, being devoid of merit, is liable to be dismissed at the threshold.

19. Even otherwise also, on merits, the assertions made by the petitioners stand controverted by the consistent stand taken by the official respondents in their respective replies. The respondents have categorically maintained that no road has been constructed by the Government authorities over the land in question, and

therefore, the question of payment of any compensation or seeking consent of the petitioners does not arise.

20. This Court finds it appropriate to refer to the stand taken by respondent No. 5, who has placed reliance upon the report submitted by the Tehsildar, Thannamandi, dated 25.08.2023. As per the said report, the Tehsildar, along with the revenue officials inspected the spot and found that a tractor road measuring 09 Marlas had been constructed by private persons and not by any Government agency. It was further reported that another road measuring 08 Marlas had also been constructed by private persons and not by any Government department(s).

21. The aforesaid report dated 25.08.2023 alongwith the sketch depicting the roads and the remaining area, has been placed on record by respondent No. 5 along with the detailed reply. The said material on record supports the stand taken by the respondents and does not substantiate the allegations levelled by the petitioners in the present writ petition.

22. In addition to the above, the stand taken by respondent Nos. 1, 4, 6 and 7 also negates the case set up by the petitioners. The stand of the said respondents is in consonance with the position projected by the other respondents, wherein it has been specifically stated that neither the said respondents have constructed any road over the land of the petitioners nor there is any proposal for construction of any such road through the said land.

23. In view of the aforesaid stand taken by the respondents vis-à-vis the allegations levelled by the petitioners, this Court is of the considered opinion that the averments made in the writ petition are not supported by any cogent or convincing documentary evidence. The relief sought by the petitioners is based on the apprehension that the respondents may construct a road over the land in

question without following the due process of law; however, the respondents have categorically denied the existence of any such proposal or construction activity over the land of the petitioners. Thus no alleged cause of action has accrued to the petitioners to file the instant petition which is premature and based on mere apprehension is not maintainable.

24. Thus, upon a careful consideration of the pleadings and the material available on record, coupled with the consistent stand taken by the respondents, this Court finds that the present writ petition is not maintainable and the same is premature being devoid of merit, and not supported by any substantive evidence to substantiate the allegations made therein. Accordingly, the same is ***dismissed*** along with all connected application(s), if any, without any order as to costs.

(Wasim Sadiq Nargal)
Judge

Jammu
13.07.2026
Shammi

