

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
(Through Virtual Mode)

.....

LPA no.03/2023
CM no.248/2023
CM no.3732/2025

UT of J&K and others

.....Appellant(s)

Through: Ms. Sagira Jaffer, Assisting
counsel vice Ms. Monika Kohli, Sr. AAG

Versus

Om Parkash

.....Respondent(s)

Through: Mr. Ashish Sharma, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR JUSTICE RAJNESH OSWAL, JUDGE

ORDER
11.05.2026

CM no.248/2023

1. This is an application seeking condonation of delay in filing the appeal against the judgement dated 7th May 2019, rendered by the learned Writ Court in SWP no.2108/2018 titled as "*Om Prakash v. State of J&K and others*". Although the objections to this application have been filed, yet learned counsel for non-applicant has submitted that delay in filing the appeal may be condoned.
2. Application, in view of no objection from other side, is allowed and delay in filing the appeal is condoned.
3. CM disposed of.

CM no.3732/2025

1. This is an application seeking leave of this Court to amend the *intra* court appeal preferred against the judgement dated 7th May 2019.
2. Notice.
3. Notice is waived by Mr. Ashish Sharma, learned counsel appearing for non-applicant. He has no objection in case the application is allowed.
4. Accordingly, the application is allowed and amendment sought to be made in the memo of appeal is permitted and the amended appeal is taken on record.
5. CM disposed of.
6. Amended appeal is taken on board

LPA no.03/2023

7. Notice.
8. Notice is waived by Mr. Ashish Sharma, learned counsel appearing for respondent.
9. With the consent of learned counsel for parties, this appeal is taken up for final disposal.
10. Heard learned counsel appearing for parties.
11. Writ petitioner/respondent herein had filed a writ petition, bearing SWP no.2108/2018, for commanding writ-respondents/appellants herein to engage him or one of his family members in Public Health Engineering Department as promised by them and as per circulars issued in this regard and to further direct them to pay the compensation to him as per the market rate along with interest as per the J&K Land Acquisition Act, in lieu of the land donated by him to PHE Department. The aforesaid reliefs were pursued on the grounds

that the respondent, by way of a gift deed dated 17th April 2015, alienated 01 Kanal of land (hereinafter 'the land in question') in favor of the PHE Department, moved by the appellants' representation that such a donation would guarantee his engagement in the service of the Department. However, having secured the land, the appellants neither provided the promised employment nor rendered any compensation. Consequently, the respondent was constrained to file the aforementioned writ petition, grounding his claim in the mandates of the circular dated 03.04.2012 and the supplementary circular dated 09.04.2013.

12. The appellants contested the respondent's claim, asserting that the subject land was designated for the construction of a 5,000-gallon Ground Service Reservoir under the Water Supply Scheme at Massu, District Kishtwar. They maintained that the respondent had solicited employment in exchange for the donation of land, pursuant to Government Order No. 138-F of 2013, dated 23rd May 2013, and was subsequently directed to furnish the requisite title documents. However, as the respondent failed to submit said documentation to the Divisional Office until after the imposition of a moratorium under Government Order No. 43-F of 2015, dated 17th March 2015, his claim could not be processed for higher approval.

13. The learned Writ Court in terms of the judgment, impugned in this appeal, directed the appellants to consider the case of respondent for engagement in lieu of land donated by him to appellants in the year 2013-14, keeping in view the recommendations of Deputy Commissioner, Kishtwar, vide communication dated 28th July 2015,

and also the provisions of SRO 520 of 2017 notwithstanding the imposition of ban in terms of Government Order no.43-F of 2015 dated 17th March 2015. The entire exercise was directed to be completed within eight weeks from the date of receipt of the judgment by appellants.

14.The appellants challenge the impugned order, asserting that since the gift deed was silent regarding any promise of employment, the learned Single Judge was precluded from issuing directions for engagement especially given the categorical ban imposed on 17.03.2015. The Department has since adopted a policy decision to revert the land to the respondent and has initiated the process with the Deputy Commissioner, Kishtwar, for a formal assessment of rent. Critically, it is submitted that the respondent's own conduct has stultified the public interest, as he has refused to permit the operation of the reservoir for the past ten years. Through communication dated 19.03.2025 (Annexure-V) Executive Engineer Jal Shakti (PHE) Hydraulic Division has requested District Development Commissioner to issue direction to concerned for initiating the process for vacating the aforesaid land and to assess the rental amount in respect of the land.

15.It is the unequivocal stance of the appellants that the Department retains no interest in retaining and utilizing the subject land; they are, therefore, prepared to effect its restitution to the respondent, accompanied by the payment of requisite rental compensation.

16.It remains undisputed that a gift deed, pertaining to land measuring 01 Kanal, was duly executed by the respondent in favor of the PHE

Department. Furthermore, the appellants concede that the respondent's case for engagement remained unprocessed, owing to his inability to furnish the requisite documentation prior to the promulgation of the moratorium on such engagements.

17. Inasmuch as the appellants disclaim any further intent to utilize the land in question, they cannot be compelled to initiate formal acquisition proceedings. The assertion that the respondent prevented the use of the reservoir is untenable and constitutes a subsequent fabrication, as no such defense was ever raised in the primary pleadings. Having failed to incorporate this claim in the 2023 memorandum of appeal, the appellants' omission renders its inclusion in the 2025 amended appeal procedurally suspect and substantively weak.

18. We are constrained to observe that the appellants have failed to act with the requisite fairness and transparency. Their eleventh-hour decision to revert the land to the respondent is, in our view, a mere subterfuge designed to evade the obligation of providing compensation under the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*. The appellants, by their actions, have constrained a resident of a distant village to undergo the tribulations of legal recourse to vindicate rights that were brazenly trampled upon by the very authorities sworn to uphold them. Having rendered the respondent neither the promised engagement nor just recompense, the State is precluded from seeking unconscionable enrichment by exploiting the plight of its humble citizens.

19. In substantially analogous circumstances, a Coordinate Bench of this Court in **WP(C) No. 1005/2022** decided on **26.09.2025** had held as under:

“Admittedly, the land has remained in possession of the respondents from the year 2017 till 2025 and for that period, the petitioner has not been paid a single penny as rental compensation. Not only that he has been deprived of his right to use and occupation of the land mentioned above. The land in question is agricultural in nature and for the period of seven long years, the petitioner has not been able to utilize his land for any beneficial purpose. Also, he was made by the respondents to approach this Court thrice for redressal of his grievances. He would have to spend some money to make this land fit for agriculture. Therefore, we are of the considered view that an amount of Rs. 6,00,000/- including the rentals as well, as lump sum compensation, shall serve the ends of justice.”

(emphasis added)

20. Insofar as the present case is concerned, the appellants have remained in occupation of the land for the past eleven years, during which time the respondent has been subjected to the vicissitudes of protracted litigation on two separate occasions. Consequently, we are of the considered view that a lump-sum award of ₹5 lakhs constitutes just and adequate compensation, encompassing the rental value for the entirety of said period. In determining this quantum, as distinguished from the ₹6 lakhs awarded in the precedent cited above, we have taken into account the specific location and nature of the subject land.

21. Accordingly, we set aside the judgment rendered by the learned writ court in the light of subsequent events. Further, the appellants are directed to disburse total compensation of ₹5 lakhs to the respondent for the curtailment of his proprietary rights and means of subsistence and to surrender vacant possession of the land within a period of three months from the date of receipt of the order. Should the appellants fail to comply within the stipulated timeframe, they shall be liable to pay

interest @ 6% per annum, calculated from the institution of this LPA.
Additionally, if necessary, the appellants shall take all necessary steps to annul the gift deed, including the execution of a cancellation deed, to facilitate the mutation of the respondent's name as owner in the relevant revenue archives.

22.Disposed of.

(Rajnish Oswal)
Judge

(Arun Palli)
Chief Justice

Srinagar

11.05.2026

Ajaz Ahmad, Secy

Whether approved for reporting? Yes

