

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

LPAOW No. 11/2016

IA No. 1/2016

Reserved on: 12.03.2026

Pronounced on: 30.05.2026

Uploaded on: 30.05.2026

Whether the operative part or full judgment
is pronounced: **Full judgment.**

1. **Raju Chowdhary,**
Age 52 years S/O Late Sh. Ravail Chand
R/O 394-A, Gandhi Nagar, Jammu.
2. **Kamla Chowdhary,**
Age 60 years W/O Rakesh Chowdhary,
R/O Supal Tehsil and District Samba.
3. **Shiv Charn,**
Age 53 years, S/O Late Sh. Ravail Chand
R/O 394-A, Gandhi Nagar, Jammu.
4. **Kamal Chowdhary,**
Age 50 years, S/O Sh. Ravail Chand R/O
394-A, Gandhi Nagar, Jammu.
5. **Rani Devi,**
Age 65 years W/O Jagdish Chowdhary,
R/O Vijaypur, Tehsil and District Samba.
6. **Bimla Devi,**
Age 63 years, W/O Darshan Chowdhary,
R/O Lane No. 17, Greater Kailash,
Jammu. Appellant(s)/Petitioner(s)

Through: Mr. U. K. Jalali, Sr. Advocate with
Mr. Neeraj Verma, Advocate.

Vs

1. **State of Jammu and Kashmir**
Through Commissioner-cum-Secretary
Revenue Department, J&K Govt. Civil
Secretariat, Srinagar.
2. **Vice Chairman, Jammu Development
Authority**
Vikas Bhawan, Rail Head Complex,
Jammu.
3. **Collector Jammu Development
Authority,**
Vikas Bhawan, Rail Head Complex,
Jammu

4. **Assistant Commissioner, Collector
Land Acquisition, PWD, Jammu.**
5. **Director Land Management, JDA,
Jammu.**
6. **Special Services Bureau**
Th. its Incharge, H.O. Panama Chowk,
Near Bahu Plaza, Rail Head Complex,
Gandhi Nagar, Jammu.
7. **Union of India**
Th. Secretary of Govt. Home
Department, Govt. of India, New Delhi.
8. **Special Bureau**
Th. Commissioner (NZ) Govt. of India,
Plot No. OB-16, Rail Head Complex,
Jammu.

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI with
Mr. Eishaan Dadhichi, CGSC.
Ms. Monika Kohli, Sr. AAG
Mr. Sachin Dogra, Advocate.

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

JUDGMENT

(Rajnesh Oswal-J)

1. The appellant, having passed away during the pendency of these proceedings, is now represented by his legal heirs. For the sake of clarity and convenience, any subsequent reference to the 'Appellant' shall denote the original appellant, Ravail Chand.
2. The appellant had filed the writ petition bearing OWP No. 789/2003 for grant of following reliefs:
 - 1) "It is, therefore, most respectfully prayed that in view of the submission made above and those to be urged at the time of hearing, your Lordships may be pleased to issue a writ of mandamus commanding the respondents to place on record of this Hon'ble Court the copy of the letter/order/authority under which the respondent No. 6 is forcibly entering into the land of the petitioner. Or in the alternative directing the respondents to issue the copy of the alleged allotment letter to the petitioner.

- 2) With a further writ of mandamus directing the respondents not to take into consideration the reference order passed by the Learned District Judge, Jammu while dealing with the land of the petitioner.
- 3) With a further writ of certiorari quashing the alleged allotment made by the respondent Nos. 1 to 5 in favour of the respondent No. 6.
- 4) With a further writ of prohibition prohibiting the respondents from making the allotment of the land of the petitioner i.e. land measuring 36 Kanals 17 Marlas situated in village Rakh Bhau bearing Khasra No. 83 min to any person including the respondent No. 6.
- 5) Any other writ, order or direction which this Court may deem just and proper in the facts and circumstances of the case be also passed in favour of the petitioner.”

3. The writ petition preferred by the appellant was dismissed by the learned Single Judge vide judgment dated 17.03.2016. Aggrieved by this decision, the appellant has preferred the instant intra-court appeal, assailing the impugned judgment on the grounds, *inter alia*, that the learned Writ Court failed to appreciate that no award was ever passed concerning his land. The appellant contends that the learned Single Judge erred in holding that because he accepted a sum of ₹70,000/- as compensation and sought a reference, he was estopped from challenging the validity of the acquisition. It is further submitted that in the absolute absence of an award touching upon the appellant’s land, any subsequent proceedings whether by way of a reference under Section 18 of the J&K Land Acquisition Act or an appeal arising therefrom, are a coram non judice and a complete nullity in the eyes of law.
4. Mr. U.K. Jalali, learned Senior Counsel appearing for the appellant, while traversing the factual matrix of the case, vehemently argued that no award was ever passed in respect of the appellant's land. He submitted that mere

participation in the reference proceedings, or in the subsequent appeal arising from the decision of the learned Reference Court, cannot estop the appellant from asserting his ownership over the land purportedly acquired by the respondents. In the alternative, learned Senior Counsel submitted that the appellant was paid compensation at the rate of only one-third of the total assessed value; accordingly, should this Court be disinclined to accept the appellant's contention regarding the invalidity of the acquisition, the respondents be directed to pay the current market value of the land. He has placed reliance upon the following judgments:

- i. **Sushil Kumar Mehta vs. Gobind Ram Bohra** reported as **1990 (1) SCC 193**.
- ii. **A. Jitendernath vs. Jubilee Hills Coop. House Bld. Soc. & Another** reported as **2006 (10) SCC 96**.
- iii. **Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. vs. Allahabad Vikas Pradhikaran and another** reported as **2003 (5) SCC 561**.
- iv. **Sat Paul & Others vs. State and Others** reported as **2013 (3) JKC 408**.
- v. **Sarup Singh and another vs. Union of India and another** reported as **2011 (11) SCC 198**.
- vi. **Shivshankar Gurgar vs. Dilip** reported as **2014 (2) SCC 465**.
- vii. **Ab. Hamid Sheikh vs. State of J&K and others** reported as **2009 (Supp) JKC 36 [HC]**.

5. Contesting the submissions, Ms. Monika Kohli, learned Senior AAG, contended that the appellant had voluntarily invoked the jurisdiction of the Collector under Section 18 of the Act, seeking a reference on the ground of inadequacy of compensation. Thereafter, the appellant actively pursued his remedy, appearing as a witness before the Reference Court and participated in the appeal preferred against the order dated 02.01.1981

passed by the learned Additional District Judge, Jammu. It is submitted that after consciously participating in the reference proceedings and pocketing the enhanced compensation awarded therein, it is no longer open to the appellant to challenge the acquisition and lay claim to the ownership of the land measuring 36 Kanals 17 Marlas comprising Survey No. 83 min.

6. Advancing arguments for respondent Nos. 6 to 8, Mr. Vishal Sharma, learned DSGI, submitted that on 11.03.1997, the Special Service Bureau, Government of India, paid an amount of ₹1,68,75,000/- to the JDA for constructing staff residential accommodations. While possession of the subject land was delivered to the indenting department, the JDA was requested to clear a certain encroachment discovered at the corner of the plot. In the meantime, however, the appellant approached this Court through misrepresentation of facts and succeeded in obtaining a stay order. It was further submitted that the appellant had earlier instituted a writ petition bearing OWP No. 1015/2002, wherein his sole prayer was for the disbursement of compensation, a fact material to the present controversy.
7. Mr. Sachin Dogra, learned counsel for respondent Nos. 2 and 5, has reiterated the arguments advanced on behalf of the other respondents.
8. Heard learned counsel for the parties and perused the record.
9. The case projected by the appellant in the writ petition for seeking the above mentioned reliefs was that the land measuring 40 Kanals comprising Survey No. 83 min situated at village Rakh Bhau was in his occupation and was mutated under LB-6/C of 1958 vide mutation No. 26

dated 05.08.1970 and subsequently ownership rights were conferred upon the appellant vide mutation No. 30 dated 14.10.1970 under Government Order No. S-432/C. In the month of June 1970, a big chunk of land measuring 428 Kanals and 17 Marlas of village Rakh Bhau and Village Channi Rama comprising various survey numbers was proposed to be acquired, which included the land of the appellant as well. A notification under Section 4 of the Land Acquisition Act was issued on 18.06.1970 and this notification included the land of the appellant comprising survey No. 72 (old). Subsequently, declaration under Section 6 of the Land Acquisition Act and notification under Section 7 of the Land Acquisition Act were also issued vide notification No. RD No. 378 of 1970 dated 12.12.1970. During the proceedings, the Collector noted that illegal mutations, three in number, had been attested in favour of Payare Lal, Ravail Chand (appellant) and Jagat Ram and accordingly he referred the matter to the Divisional Commissioner vide communication dated 21.05.1971 and a request was also made for early necessary action, as the possession of the land was already handed over to Public Works Department under Section 17 of the Land Acquisition Act. Divisional Commissioner, Jammu, vide communication dated 27.05.1971 responded to the letter dated 21.05.1971 of the Collector by stating that he had advised the Assistant Revenue Attorney to file proper revision petition against these mutations forthwith and also advised the Collector not to make the payments in respect of the land concerning these three mutations till further orders. Later, the award came to be published on 19.08.1971

and it was provided that the compensation has been assessed for quantum of land measuring 358 Kanals 13 Marlas (127 Kanals 12 Marlas of Village Channi Rama and 231 Kanals 1 Marla of Village Rakh Bhau). In the award it was mentioned that the Divisional Commissioner, Jammu vide his communication dated 27.05.1971, has directed that the payment of compensation in respect of the land measuring 70 Kanals 4 Marlas of Village Rakh Bhau to be not made till further orders and a separate award will be issued.

10. Subsequently, the mutation attested in favour of the appellant was set aside by the Financial Commissioner. The appellant successfully assailed the said order in OWP No. 48/1973, wherein the learned Single Judge, vide order dated 29.08.1985, quashed the Financial Commissioner's decision. Aggrieved thereby, the respondents therein preferred an appeal through the medium of LPA No. 103/1985. However, the same was dismissed by the Division Bench vide judgment dated 09.03.1993.
11. A further perusal of the record establishes that the appellant, co-jointly with Karim Baksh, Ahmed Din, Allah Rakha, Nikka, Dhanna, Noor Mohd., Nek Mohd., Nasibo, Nanko, Lal Hussain, Bhani Ram, Som Nath, and Kasturi, approached the Collector, Land Acquisition, Jammu, seeking a reference to the District Judge on the ground that the compensation assessed was inadequate. Consequently, the Collector made a reference to the learned Reference Court in terms of Section 18 of the Land Acquisition Act. During the proceedings before the Reference Court, the

appellant appeared as his own witness and made the statement, which is extracted as under:

“Ravail Chand-applicant has stated that he was having 42 Kanal Govt. Land in his occupation in Rakh Bhau which has been acquired by the Government. The present cost of the land was 20/22 thousand per Kanal. The Government has assessed compensation at the rate of 3000/- rupees. At the time when the land was acquired from him its cost was 10,000/ per Kanal but the Govt. Fixed its compensation at 600/- rupees per Kanal and out of which they were entitled to 200/- rupees only as 1/3rd share. This compensation was very meagre. Prior to acquiring his land, Govt. Had acquired land for the railway which also was in Rakh Bhau for which Rs. 1100/- were paid to the occupants as 1/3rd share of the compensation. That land was acquired long earlier to the acquisition of his land. He was in occupation of this land since 2007 as allottee of the remount department to whom he was paying 1/4th share as rent.”

12. The Reference Court, vide its order dated 02.01.1981, enhanced the compensation and the appellant received the compensation of Rs. 72,677.33/-.
13. It is pertinent to note that prior to instituting OWP No. 789/2003, the appellant had preferred another writ petition, bearing OWP No. 1015/2002, seeking a writ of mandamus to command the respondents to pay compensation at the prevalent market rate for the very same land before commencing any construction activities thereon. In that petition, the appellant had placed reliance upon the judgment dated 29.08.1985 passed by the learned Single Judge, which we have already taken note of. Subsequently, the said writ petition was withdrawn on the ground that the grievances raised therein were fully covered by the later petition, OWP No. 789/2003.

14. By way of a rejoinder, the appellant sought to persuade the learned Writ Court that the subject land was excluded from the earlier acquisition proceedings, pointing out that it had been notified for fresh acquisition by the JDA under Section 4(1) notification dated 09.07.1993, issued by the Collector, Jammu Development Authority. However, this subsequent notification was withdrawn *qua* the land under Survey No. 83 min vide a withdrawal notification dated 17.04.1996. The appellant also preferred CM No. 1/2015, seeking leave to bring the relevant revenue records on record.
15. The primary contention advanced by the appellant is that his land, measuring 36 Kanals and 17 Marlas, was never acquired by the respondents. Crucially, however, the appellant admits that the subject land was notified for acquisition under Section 4(1) of the Act, and that a declaration under Section 6 was duly issued in respect thereof. A close perusal of the award published on 19.08.1971 reveals that while 428 Kanals and 17 Marlas of land situated in Villages Rakh Bhau and Channi Rama was declared necessary for public purposes, the final award determining compensation was confined to 358 Kanals and 13 Marlas (comprising 127 Kanals 12 Marlas in Village Channi Rama and 231 Kanals 1 Marla in Village Rakh Bhau). The remaining land, measuring 70 Kanals and 4 Marlas in Village Rakh Bhau, was excluded from immediate compensatory disbursement on the sole ground that the mutations concerning it were allegedly attested illegally.

16. It is manifest from the record that the sole impediment to determine the compensation for this 70 Kanals and 4 Marlas was the perceived illegality of the three aforementioned mutations. It is equally evident that it was at the explicit instance of the appellant and other co-owners that the Collector made a reference to the District Judge under Section 18 of the Land Acquisition Act. As noted hereinabove, the appellant actively deposed before the Reference Court regarding the inadequacy of the compensation assessed by the Collector, and his plea for enhancement was ultimately acceded to. Consequently, the appellant received the enhanced compensation of ₹72,677.33/- and duly executed a receipt acknowledging the same.
17. The appellant cannot be permitted to blow hot and cold, change his stance across various proceedings purely for pecuniary advantage and convenience. Having invoked the reference jurisdiction under Section 18 of the Act, pursued the matter before the Reference Court for enhancement, and pocketed the enhanced compensation determined by the learned District Judge, the appellant cannot now be heard to say that the acquisition itself was non-existent. The mere fact that the passing of the award was complicated by an issue touching upon the legality of three mutations cannot be leveraged by the appellant to claim a windfall. In **‘Suzuki Parasrampuriah Suitings Private Limited v. Official Liquidator Of Mahendra Petrochemicals Limited (In Liquidation) And Others’**, 2018 AIR SC 4769, the Hon’ble Apex Court has held as under:

12. A litigant can take different stands at different times but cannot take contradictory stands in the same case. A party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands. The untenability of an inconsistent stand in the same case was considered in **Amar Singh v. Union of India**, (2011) 7 SCC 69, observing as follows:

“50. This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions.”

13. A similar view was taken in **Joint Action Committee of Air Line Pilots' Assn. of India v. DGCA** (2011) 5 SCC 435, observing:

“12. The doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. ... Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.”

(emphasis added)

18. As rightly noticed by the learned Writ Court, the appellant accepted the compensation under protest and pursued his remedies all the way to the Division Bench. It is, therefore, legally impermissible to characterize the Section 18 reference and the judgment of the learned Additional District Judge as nullity. The land having been validly acquired and delivered to the indenting department, which subsequently conveyed 13 Kanals to respondent Nos. 6 to 8 for a consideration of ₹1,68,75,000/-, no injunction could lie against them. We fully endorse the findings and the structured reasoning of the learned Writ Court in dismissing the appellant's claims.
19. The appellant further urged that compensation was restricted to one-third of the total assessed amount based on his presumed status as a tenant, following the Financial Commissioner's cancellation of the mutation attested in his favour under Government Order No. S-432/C. Given that

the Financial Commissioner's order was quashed by the learned Writ Court and upheld in appeal by the Division Bench, the appellant's title as owner, rooted in the ownership rights conferred by the said Government Order, remains unimpeachable and established beyond any shadow of doubt.

20. The JDA, in its response, in para (9), has stated that *“if there is any dispute in respect of entitlement of the compensation, for that the petitioner is always at liberty to agitate the matter before the concerned forum. If ownership rights were granted in favour of the petitioner and the petitioner's entitlement for the compensation as owner, the answering respondent authority has no objection so far as entitlement of the petitioner for the compensation is concerned. So far as acquisition is concerned, that has already assumed finality since long”*. Thus, the court must also determine whether the compensation disbursed to the appellant was capped at one-third of the total assessment based on a tenancy status, precipitated by the Financial Commissioner's cancellation of the mutation attested in his favour pursuant to Government Order No. S-432/C.
21. Having carefully examined the impugned judgment, we find no cogent reason to depart from the findings of the learned Writ Court. Nonetheless, it is manifest that the issue regarding the payment of the remaining two-thirds compensation was never canvassed before the learned Writ Court. The appellant now seeks to contend that upon the quashing of the Financial Commissioner's order, which had set aside, the mutation attested in his favour, he stood cloaked with the status of an owner, and

was consequently entitled to compensation in that capacity, rather than as a tenant.

22. In our considered view, the appellant's claim to the remaining two-thirds share of the total compensation warrants verification. This appeal is, therefore, disposed of with a direction to respondent Nos. 1 to 5 to verify whether the compensation paid to the appellant was restricted to one-third of the quantum assessed by the Collector and enhanced by the Reference Court, based on his status as a tenant of the land, measuring 36 Kanals 17 Marlas comprising Survey No. 83 min at Village Rakh Bhau. Should it be found that he received only one-third of the compensation, the respondent Nos. 1 to 5 are directed to pay the balance amount alongwith statutory interest, to be calculated from the date balance payment became until the final disbursement. This exercise shall be concluded within a period of three months from the date of receipt of a certified copy of this order.
23. **Disposed of** along with the connected application.

(RAJESH SEKHRI)
JUDGE

(RAJNESH OSWAL)
JUDGE

Jammu
30.05.2026
Sahil Padha

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes