

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

Uploaded on 14.09.2026

WP(C) No. 1634/2021

Syed Shabir Ahmed

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

Through: Mr. Syed Aaqib Mujtaba, Adv.

vs

U. T. of J&K and others

..... Respondent(s)

Through: Ms. Priyanka Bhat, Adv. vice
Ms. Monika Kohli, Sr. AAG for Nos. 1 to 5
Mr. Atul Verma, Adv. for Nos. 6 to 8(JDA)

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
10.09.2026

1. The petitioner, through the medium of present petition, has challenged communication bearing No. FC-LS/Misc-288/2020 dated 22.10.2020. Challenge has also been thrown to communication bearing No. CTP/JDA/BPC/85657 dated 03.12.2020 issued by respondent Nos. 7 and 8, whereby the building permission case of the petitioner has been rejected.
2. As per the case of the petitioner, he is the owner in possession of land measuring 2 kanals 11 marlas falling under khasra No. 260 min situated at Village Narwal Bala, Tehsil Bahu, District Jammu and the said land is duly mutated in his favour. The land in question has been recorded as "Gair Mumkin Khad". It has been submitted that the nearest distance between the land of the petitioner and dry Nallah is more than 200 meters and whole of the area is fully developed. It has been submitted that the

Executive Engineer, Flood Control Division, Jammu has conveyed no objection in favour of the petitioner for raising residential construction on the said land. Further, the Tehsildar Jammu Development Authority(JDA), Jammu has vide his report dated 06.02.2019 conveyed that the aforesaid land of the petitioner does not belong to the JDA.

3. It has been submitted that the petitioner had applied for building permission for raising construction of residential structure on the land in question and approached respondent No. 5 in this regard. Vide communication dated 03.12.2020, it was conveyed to the petitioner by respondent Nos. 7 and 8 that his case for building permission was placed before the Building Operations Controlling Authority(BOCA) and his building permission case could not be processed. The reasons disclosed for rejection of the permission are that the land in question has been recorded as “Gair Mumkin Khad” and that the land in question falling under khasra No. 260 min stands acquired by the JDA.
4. The petitioner has assailed impugned action of the respondents refusing building permission in his favour on the ground that the land in question has not been acquired by the JDA and that even though the land of the petitioner is shown to be a “Gair Mumkin Khad”, yet it is beyond more than 200 meters from the nearest dry Nallah, as such, construction on the said land is permissible under law. It has been contended that the rejection of the petitioner’s case for building permission on the strength of impugned communication dated 22.10.2020 issued by respondent No. 2 is not tenable in law because the said communication is based on the

provisions contained in the Big Landed Estates Abolition Act, which stands repealed in terms of the J&K Reorganization (Adaptation of State Laws) Fifth Order, 2020 issued vide SO. 3808(E) dated 26.10.2020.

5. Respondent Nos. 6 to 8 in their reply to the writ petition have reiterated their stand that the land of the petitioner is recorded as “Gair Mumkin Khad” as such, the petitioner is debarred from raising construction on the land in question. It is further stated that the land falling under khasra No. 260 min stands acquired by the JDA. On account of these two reasons, the Building Operations Controlling Authority in its meeting decided that the case of the petitioner cannot be processed.
6. Respondent Nos. 1 to 4 in their reply to the writ petition have submitted that pursuant to judgment rendered by the Division Bench of this Court in WPIL Nos. 19/2014 and 20/2013 delivered on 12.02.2016, the Government issued SRO 456 in exercise of power conferred under Section 4 of the Jammu and Kashmir Water Resources (Regulation and Management) Act, 2010(for short the Act of 2010), by virtue of which, the Government adopted the State water policy plan forming part of the said SRO. It has been submitted that based upon administrative Council Decision dated 29.01.2022, the Government issued Government Order No. 18-JK(Rev) of 2022 dated 04.02.2022 and accorded sanction for constitution of three tier committee for delineation/demarcation of the land, which do not form part of any water course/source, but have been recorded as “Gair Mumkin Khad”, “Gair Mumkin Darya”, “Gair Mumkin Nallah” etc. in the revenue records, to be carried out by the District Level

Committee under the supervision of Divisional and UT Level Committees.

It has been submitted that the three Committees have been duly notified.

7. It has been submitted that till such policy/scheme is framed by the State Government, *status quo* with respect to such lands/khads has to remain in force. According to respondent Nos. 1 to 4, even if, it is assumed that impugned communication dated 22.10.2020 has been issued under wrong provision of law, still it will not alter the basic impact of the judgment of the Division Bench and the steps taken pursuant thereto.
8. During the pendency of this petition, on 30.10.2025, this Court expressed doubt about the stand of the respondent-JDA with regard to the acquisition of the land of the petitioner and accordingly, Vice Chairman, JDA was directed to come in person along with relevant record on the basis of which plea with regard to acquisition of land, has been taken by the said respondent in their reply/objections. Pursuant to the said direction, on 13.11.2025, learned counsel appearing for the respondent-JDA, sought time to file fresh reply affidavit by replacing its earlier reply filed on 27.12.2022.
9. Pursuant thereto, the respondent-JDA filed a fresh reply affidavit, in which, it has been stated that upon verification of the record, it has emerged that the land owned/claimed by the petitioner does not fall within either the acquired or transferred land. It has been clarified that the petitioner's land is outside the JDA acquired/transferred portion of khasra No. 260.

10. I have heard learned counsel for the parties and perused the record of the case.
11. As is clear from the impugned communication dated 03.12.2020 issued by the Chief Town Planner, JDA, Jammu, building permission case of the petitioner has been rejected on two grounds, first that the kind of soil recorded is “Gair Mumkin Khad” and secondly, that the land under khasra No. 260 min has been acquired by the JDA. So far as second reason for rejection of the building permission case of the petitioner is concerned, the same does not survive, because the respondent-JDA in its fresh reply has submitted that the land of the petitioner has neither been acquired by the JDA nor it was transferred to it. In view of this development, the Court has to consider whether the impugned action of the respondent-JDA can be sustained in law on the ground that the land of the petitioner is categorized as “Gair Mumkin Khad”.
12. In the above context, a look at the provisions contained in the Act of 2010 would reveal that Section 3 of the said Act declares every water source in the State as the property of the Government, irrespective of the fact that the said water source may be the proprietary right of any individual or entity and the same would stand terminated upon commencement of the said Act. Section 2 (zzc) of the Act of 2010 provides that water course would include a khad and section 2(zze) of the Act includes water course within the definition of water source. Thus, “Khad” as per the provisions contained in the Act of 2010 comes within the definition of water source. Once kind of soil in respect of the land, even if, owned by an individual, is

shown to be “Gair Mumkin Khad”, it automatically comes within the definition of water source/course and as such, the same is vested with the Government. Thus, the respondent-JDA would be justified in refusing the building permission in respect of land, which is categorized as “Gair Mumkin Khad”. Besides this, raising of construction on water sources/course is not permissible under law.

13. It appears that during the pendency of the writ petition, the Government has framed a policy in terms of Government Order No. 18-JK(Rev) of 2022 dated 04.02.2022, whereby committees have been constituted at District level, Divisional Level and UT Level providing for procedure for delineation/demarcation of land, which do not form part of any water source or course, but it has been recorded as ”Gair Mumkin Khad” etc. in the revenue records.
14. It seems that pursuant to the aforesaid Government Order, a public notice has been issued by Sub Divisional Magistrate, Jammu(South), Gangyal vide communication dated 09.05.2022 informing the public about the delineation/demarcation of land which do not form part of any water course/source, but has been recorded as “Gair Mumkin Khad”, “Gair Mumkin Darya”, “Gair Mumkin Nallah” etc. in the revenue records. As per the list attached to the said communication, land measuring 394 kanals and 8 marlas in khasra No. 260 of Village Narwal Bala, Tehsil Bahu, District Jammu has been shown to be outside the water channel.
15. According to the petitioner, his land forms part of the land, which has been shown as existing outside the water channel. If that be so, the

petitioner is at liberty to apply afresh for grant of building permission with the competent authority explaining the changed scenario. However, action of the respondent-JDA in refusing building permission to the petitioner on the ground that his land has been shown as “Gair Mumkin Khad” cannot be faulted for the reason that at the relevant point of time, there was no policy in place for delineation/demarcation of land which do not form part of any water course/source, as the said policy came into force only after the issuance of Government Order dated 04.02.2022(supra).

16. For all what has been discussed hereinabove, the instant writ petition is **disposed of** by holding that the action of the respondent-JDA in refusing building permission of the petitioner, on the ground that the land belonging to the petitioner is shown as “Gair Mumkin Khad”, is in accordance with the law, but having regard to the changed scenario, the petitioner is at liberty to apply afresh for grant of building permission with the competent authority along with proofs/documents showing that his land falls outside the water channel. If and when such an application is filed by the petitioner with the competent authority, the same shall be considered afresh by the said authority in accordance with law.

(SANJAY DHAR)
JUDGE

Jammu
10.09.2026
Rakesh PS

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No