

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

WP(C) No.2030/2021

Reserved on: 02.04.2026
Pronounced on: 08.04.2026
Uploaded on:- 08.04.2026.

*Whether the operative part or
full judgment is pronounced: Yes*

S. Surinder Singh (66 yrs)
S/O late S. Suchet Singh
R/O H.No.23 Sector-7, Lane No.1,
Nanak Nagar, Jammu

..... Petitioner

Through :- Mr. S.M Choudhary, Sr. Adv., with
Mr. Bilal Choudhary, Adv.

V/S

- 1. The Commissioner/Secretary to Govt.,**
Rural Development Department,
Civil Secretariat, Jammu.
- 2. The Director,**
Rural Development, Jammu.
- 3. The District Collector,**
District Jammu.
- 4. The Block Development Officer,**
Marh.

.....Respondent(s)

Through :- Ms. Jagmeet Kour, Adv., vice
Mr. Raman Sharma, AAG.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. Petitioner claiming to be the son of his predecessor-in-interest namely Suchet Singh, a displaced person from Pakistan Occupied Kashmir, who had occupied a piece of evacuees' property land measuring 3 kanals and 16 marlas falling under khasra No.234 min (old) new 159 situated at village Halqa, Tehsil Jammu now Tehsil Marh District Jammu, has asserted that the aforesaid piece of land was initially allotted to his predecessor-in-interest, vide Government Order No.578-C and after coming into force, the Agrarian Reforms Act 1976,

occupancy rights under section 3-A of Agrarian Reform Act, were also conferred upon him; and that after the death of his father, the petitioner namely Suchet Singh has acquired the occupancy rights in the land in question which have been recognized in the Record of Rights (ROR) and Khasra-Girdawaris, which is evident from the Record of Rights of Kharif 2006 and Khasra Girdawari of Rabi 2013; that the father of the petitioner by way of Will had bequeathed the aforesaid land in favour of the petitioner; that the land of the petitioner was occupied by the respondents for construction of Block Development Office at Marh; that the father of the petitioner had approached the respondents for grant of compensation and after his death, the petitioner had also been pursuing the case of compensation before the respondents but they were denied the compensation, for their land.

2. It has been pleaded that when no compensation was provided to the petitioner, he moved an RTI application in the year 2012 in the office of District Collector, Jammu and he was provided information that the land of the petitioner was under the occupation of Rural Development Department and a Block Development Office has been constructed on his land; that as per the demarcation conducted by the revenue field staff, the petitioner's land was found to have been taken over by the State authorities without following process of acquisition; that the petitioner served a legal notice upon the respondents on 03.12.2020 seeking compensation of land and finally, it was prayed to direct the respondents either to vacate the land of the petitioner and handover vacant possession to the petitioner or in the alternate to pay compensation to the petitioner, according to market rate of the land, prevailing in the area.

3. The respondents have filed their counter affidavit, stating therein that the construction of Block Development Officer's office at Marh was started in

the year 1953-54 approximately; and that this building is here for the last more than 65 years without any objection by the petitioner or his father; that the petitioner has approached this Court now after inordinate delay and the petition is liable to be dismissed for delay and laches.

4. The petitioner in his rejoinder to the counter affidavit has pleaded that the official respondents filed reply raising preliminary objection that the writ petition is hit by inordinate delay and laches and deserves to be dismissed outrightly on the ground that the land in question has been donated to the department long back and whereafter the construction of BDO office building was completed and the land remained in the possession and occupation of the BDO office; that neither the deceased father of the petitioner nor the petitioner herein, ever donated or executed any document in favour of the respondent-department for construction of BDO office; that the land had been occupied by the department without any process of acquisition and paying any compensation, to the petitioner; that the writ petition cannot be dismissed on the ground of delay and laches as the petitioner and his father had been approaching the department for payment of compensation but no compensation was paid to them. It has been further reiterated that neither the petitioner nor his predecessor in interest have ever donated the land in question to the respondents-department; and that the respondents have failed to place on record any revenue record or document which can show that the land was donated to the department.

5. Learned counsel for the petitioner has vehemently argued that the petitioner's land during the time of his predecessor-in-interest, is stated to have been under the possession of the respondents, who had constructed on it Block Development Office at Marh in the 1950s, when the right to hold property was a fundamental right guaranteed to the citizens of the country and such a

fundamental right could not have been waived off by a citizen by remaining silent for pretty long time, more particularly, when the State has failed in its constitutional obligation to follow the process of land acquisition before taking over the private property of the citizens. He has further been argued that the respondents have failed to place on record either any document so as to suggest that land in question had been donated by the predecessor-in-interest of the petitioner to the respondents as claimed by them or any revenue entry with regard to this fact and in such a situation the respondents cannot take a refuge under the plea of delay and laches, so as to deny the legitimate right of the petitioner to hold his property or to seek compensation for that and it is prayed that the petition be allowed and the respondents be directed to either handover the vacant possession of the land to the petitioner or to pay its compensation to the petitioner.

6. Learned counsel for the respondents, ex-adversus, argued that the Block Development Office at Marh over the land in question, was stated to have been constructed in the early 1950s, apparently on the land having been donated by the predecessor-in-interest of the petitioner to the Rural Development Department; and that after such an inordinate delay, the petitioner cannot maintain his claim and his petition is liable to be dismissed, suffering from delay and laches. It was prayed that the petition be dismissed.

7. Heard learned counsel for both the sides and considered.

8. The facts which emerged out of the pleadings are that the subject matter of this petition i.e., land measuring 3 kanals and 16 marlas comprising of khasra No.234 min was in the name of one Abdul Haq; that this land was declared as evacuee's property and came under the possession of one Suchet Singh who was a displaced person from Pakistan Occupied Kashmir, who was

later allotted this land in terms of Government Order No.578-C and with the enforcement of Agrarian Reforms Act 1976, occupancy rights were conferred upon him under Section 3-A of the Act; that after the death of said Suchet Singh, the occupancy rights devolved upon the petitioner. The land in question was admittedly used for the construction of Block Development Office at Marh. Though the respondents claim that this piece of land had been donated by the father and predecessor-in-interest of the petitioner, however, during hearing of this case, the learned counsel for the respondents failed to substantiate this fact by making any reference to any document evidencing the donation or to any entry made in the revenue record regarding the fact of donation. As such, the respondents failed to substantiate the claim with regard to donation of the land. The respondents-State having occupied the private property in the year 1953-54 without following due process of law or paying of compensation amount cannot claim to have perfected their title to the land in question through adverse possession and also cannot deny compensation based on delay and laches. So far as the donation is concerned, such a claim must be supported by evidence and mere presumption, based on lack of contemporaneous protest by the land owner, is not enough. In absence of evidence, plea of donation is liable to be rejected.

9. The contention of the respondents that the land in question had been donated in their favour by the predecessor-in-interest of the petitioner besides being not substantiated, cannot be accepted, as in a similar plea raised before the Apex Court by the State of Himachal Pradesh in case “*Vidya Devi vs. State of Himachal Pradesh & Ors.*”, reported as **2020 (2) SCC 569**, that predecessor of the appellants therein had orally consented to the acquisition but the Hon’ble Supreme Court rejected the same, terming it as a case of lack of authority and legal sanction in compulsorily divesting the appellant of her property by the

State. Paragraphs 12.1 to 12.12 of Vidya Devi are worth taking note of and are thus set-out below: -

"12.1. The Appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by [Article 31](#) in Part III of the Constitution. [Article 31](#) guaranteed the right to private property which could not be deprived without due process of law and upon just and fair compensation.

12.2. The right to property ceased to be a fundamental right by the [Constitution \(Forty Fourth Amendment\) Act, 1978](#), however, it continued to be a human right in a welfare State, and a Constitutional right under [Article 300 A](#) of the Constitution. [Article 300 A](#) provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in [Article 300 A](#), can be inferred in that Article.

12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under [Article 300 A](#) of the Constitution.

Reliance is placed on the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai, wherein this Court held that: (SCC p.634, para 6)

"6. ... Having regard to the provisions contained in [Article 300A](#) of the Constitution, the State in exercise of its

power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid."

(emphasis supplied)

12.4. In [N. Padmamma v. S. Ramakrishna Reddy](#), this Court held that: (SCC p.526, para 21)

"21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. [Article 300A](#) of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of [Article 300A](#) of the Constitution of India, must be strictly construed."

(emphasis supplied)

12.5. In [Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P. & Ors.](#) this Court recognized the right to property as a basic human right in the following words (SCC p.379, para 30)

"30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed, the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the

consensus among political thinkers and jurists."

(emphasis supplied)

12.6. In [Jilubhai Nanbhai Khachar v. State of Gujarat](#), this Court held as follows: (SCC p.627, para 48)

"48. ... In other words, [Article 300A](#) only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under [Article 300A](#). In other words, if there is no law, there is no deprivation."

(emphasis supplied)

12.7. In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

12.8. The contention of the State that the Appellant or her predecessors had "orally" consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the Appellant of her property by the State.

12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in [Tukaram Kana Joshi & Ors. v. M.I.D.C &](#)

Ors., wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in *State of Haryana v. Mukesh Kumar* held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multifaceted dimension.

12.11. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to "adverse" possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.

12.12. The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be

exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice."

10. Otherwise also, the plea of the donation of the subject matter is plea of fact which needs to be proved by reference to evidence whether documentary or oral. The respondents seem to have presumed it as donation of land on the ground that the petitioner's predecessor-in-interest during his life time and thereafter the petitioner for pretty long time did not dispute the possession of the respondents by approaching them for payment of compensation, there cannot be any justification of donation by a displaced person of a small parcel of land having been allotted to him by the Government for his settlement after being displaced from Pakistan Occupied Kashmir, particularly, when no evidence has been placed on record.

11. A Division Bench of this Court in case titled "***Mushtaq Ahmad Jan & Ors. Vs. Govt. of J&K***", reported as **2025 AIR Jammu and Kashmir 135**, has also held that the right to property as a constitutional and human right, and State cannot forcibly occupy the private property without due process of law or paying compensation and the delay and laches cannot be a ground to deny compensation for continuing unauthorized possession by the State. Paragraph no.13 being relevant is extracted as under:

"13. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Writ Court runs contrary to the view taken by the Hon'ble Supreme Court in the case of [Vidya](#)

[Devi](#) supra. Under somewhat similar circumstances, a case of one Amina Begum was considered by a Division Bench of this Court in LPA No. 105/2019 titled Amina Begum vs. State of JK & Ors. The Division Bench relying upon the judgment of the Hon'ble Supreme Court in Vidya Devi and the other one titled [State of UP & Ors. vs. Manohar](#) reported in AIR 2005 SC 488 rejected the similar plea of delay and laches put forth by the Union Territory of J&K in the aforesaid case.”

12. Having regard to above referred legal precedents and the undisputed facts that the land in question before partition of the sub-continent was in the name of the one Abdul Haq which was later declared as Evacuee Property, initially allotted to one Suchet Singh a displaced person from Pakistan Occupied Kashmir and then conferred occupancy rights under J&K Agrarian Reforms Act 1976, had been divested of this land by the respondent-Rural Development of the Government of Jammu & Kashmir, unauthorizedly. Both the contentions of the respondent-department (a) with regard to donation and (b) defeating the claim of the petitioner as succession-in-interest of his father, being inordinately delayed cannot be accepted, in view of the factual background that there is neither any documentary evidence with regard to donation by the petitioner or his predecessor-in-interest or any revenue entry in this behalf and that the landholder cannot be divested of his landed estate by the State or its functionaries, without resorting to its acquisition or payment of compensation and even a delayed claim for compensation cannot be turned down.

13. Viewed thus, this Court is of the considered view that the petitioner is entitled to be compensated for deprivation of his property. The petition is, thus, **allowed** with a direction to the respondent no.1 to immediately and forthwith initiate the process of acquisition, in accordance with The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013, within a period of four weeks from the date a copy of this judgment is supplied today and determine the compensation payable to the owner of the subject land under possession of the Rural Development Department and thereafter the compensation be paid to the petitioner, expeditiously.

14. The petition stands disposed of along with connected application(s) on the above terms.

(M A Chowdhary)
Judge

JAMMU
08.04.2026
Surinder

