IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Case No: MA No. 134/2014

Reserved on: 15.09.2026
Pronounced on: 07.10.2026
Uploaded on: 07.10.2026

Raj Sharma (Bharti)

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

Through: Ms. Zoya Bhardwaj, Advocate

Vs.

Collector land Acquisition and another **.... Respondent(s)**

Through: Mr. Ravinder Gupta, AAG

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

JUDGMENT

1. Instant appeal was filed by two appellants namely Kailash Nath Sharma and Raj Sharma (Bharti) under Section 52 of the J&K Land Acquisition Act, Svt., 1990 thereby challenging a judgment dated 02.12.2013 passed by learned Additional District Judge, Jammu, whereby a reference made by respondent No. 1-Collector Land Acquisition PWD, Jammu under Section 18 of the J&K Land Acquisition Act, Svt., 1990 on file No. 6/LA of 1996 has been dismissed.

2. The facts as emanating from the record are that the two appellants are brother and sister of one Kumari Shanta Bharti who in turn owned and possessed in her own name

and right 13 kanals' parcel of land under Khasra No. 63, situated at Village Sitni (Sitlee), Jammu.

3. In the year 1973, said land was acquired by the respondents for the purpose of construction of By-Pass Road to Tawi Bridge in terms of an award No. LA-1878-80 dated 19.12.1973. It is pertinent to mention here that the acquisition award No. LA-1878-80 dated 19.12.1973 pertained to 196 kanals 14 marlas of land falling in Village Sitni (Sitlee) and it included said 13 kanals of land in khasra No. 63 owned by Kumari Shanta Bharti- the predecessor-in-interest of two appellants.

4. It seems that Kumari Shanta Bharti- the predecessor-in-interest of two appellants, opted not to receive cash compensation in respect of her 13 kanals acquired land, and exercised an option for an alternative equivalent land.

5. After much delay on 05.10.1994, the respondent No. 1-Collector Land Acquisition PWD Jammu passed an award bearing No. LA/201-02, thereby providing alternate and equivalent value land, comprising two chunks of land in Village Sitni, i.e., eight (8) kanals three (3) marlas in Khasra No. 62 min and seventeen (17) marlas in Khasra No. 96 and third chunk of land, i.e., four (4) kanals in Khasra No. 344 min.

6. It appears that possession of two chunks of land in khasra numbers 62 & 96 situated in Village Sitni came to be

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delivered to the Kumari Shanta Bharti- the predecessor-in-interest of two appellants, but she complained that possession of 4 kanals of land comprised in Khasra No. 344 at Village Khanpur was never delivered to her because said chunk of land was found to be in claim and possession of the Army.

7. Kumari Shanta Bharti-the predecessor-in-interest of the two appellants also felt aggrieved that there was an inordinate delay of almost 20 years to pass the award of alternate land and that gave rise to claim of damages for deprivation of her property for twenty years on account of escalation of prices relating to development of her land.

8. This prompted Kumari Shanta Bharti- the predecessor-in-interest of two appellants to make an application under Section 18 of the J&K Land Acquisition Act, Svt. 1990 before respondent No.1-Collector Land Acquisition PWD Jammu thereby seeking reference of the dispute.

9. In her said application for reference, Kumari Shanta Bharti- the predecessor-in-interest of the two appellants, besides stating that possession of 4 kanals of land situated in Village Khanpur had not been handed over to her, also contended that the delay in passing the award with regard to the alternative land had given rise to a claim for compensation in her favour on account of escalation in the costs of construction that had taken place between the

years 1973-when her land was taken over, and 1994-when the award was passed.

10. The respondent No.1-Collector Land Acquisition, PWD Jammu made a reference of the disputes to the Principal District Judge, Jammu, and the reference came to be assigned to the learned Additional District Judge, Jammu.

11. The respondent No.1-Collector Land Acquisition PWD Jammu filed its reply to the application for reference in which it was pleaded that passing of the award involved going through several formalities and that the case had to pass through several channels, as such, there was no intentional delay in passing the award. It was also pleaded by respondent No.1-Collector Land Acquisition PWD Jammu that possession of the entire land provided to Kumari Shanta Bharti- the predecessor-in-interest of the two appellants in terms of the award has been handed over to her.

12. Vide an order dated 18.11.1996, learned Additional District Judge, Jammu framed the following issues:-

    1. "Whether the award was passed by respondent collector after inordinate and abnormal delay, if so what is its effect on the reference and award? OPP
    2. In case issue no.1 is proved in affirmative, whether the applicant is entitled to compensation for wrongful deprivation of her property and loss occasioned thereby, if so what is the quantum thereof? OPP
    3. Whether because of land given in exchange to the petitioner at different places, the petitioner has been put to inconvenience, lesser use with lesser value of

property, if so whether the petitioner is entitled to compensation on that score and what is the quantum of compensation? OPP

4. Whether the land in question belongs to Brindaban housing society, if so what is its effect on award? OPR

5. At last to what relief the petitioner is entitled.

13. It seems that Kumari Shanta Bharti- the predecessor-in-interest of the two appellants filed an application before the learned Reference Court, praying for framing of an additional issue with regard to the question as to whether complete possession of the land given in exchange to her i.e., Kumari Shanta Bharti- the predecessor-in-interest of the two appellants in terms of the award, had been handed over to her. The application was allowed by the learned Reference Court when on 15.01.1998, the following additional issue came to be framed with onus placed upon the respondents in the reference:-

> "3-A Whether the respondent has delivered to the petitioner complete possession of entire land agreed to be delivered to the petitioner in exchange of the land acquired in terms of the award?...O.P.R"

14. In order to prove her case, Kumari Shanta Bharti- the predecessor-in-interest of two appellants entered the witness box, and her statement was recorded on 12.11.1999. No other witness was examined by the appellant. It is pertinent to mention here that Kumari Shanta Bharti- the predecessor-in-interest of the two appellants had made an application before the Reference

Court for summoning respondent No.1-Collector Land Acquisition PWD Jammu as a witness, along with the record showing whether physical possession of 4 kanals of land falling under Khasra No. 344, situated in Village Khanpur, had been delivered to her. The record further shows that respondent No.1-Collector Land Acquisition PWD Jammu did appear before the Court as a witness. However, on 29.11.2001, his examination-in-chief, as also part of his cross-examination, was recorded by the Reference Court. Since the court time was over, as such, his further cross-examination was deferred. Thereafter, several opportunities were granted to the respondents for appearance of respondent No.1-Collector Land Acquisition PWD Jammu for recording his further statement in cross examination, but it seems that for one reason or the other, the respondent No.1-Collector Land Acquisition PWD Jammu did not appear before the Court for recording his further statement. Ultimately, vide an order dated 29.08.2007 of the learned Reference Court, the evidence of the respondents was closed and the case was set down for final arguments.

15. During pendency of reference proceedings, Kumari Shanta Bharti expired on 13.06.2010.

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16. By virtue of an order dated 29.10.2012, the learned Reference Court brought on record her two legal heirs/representatives.

17. The learned reference Court vide its impugned judgment dated 02.12.2013, has proceeded to dismiss the reference on the ground that Kumari Shanta Bharti, the petitioner failed to produce any evidence to show that due to the abnormal delay in passing the award of land in exchange, she had suffered any loss or that because the land given in exchange was situated at different places, she had been put to any inconvenience so as to be compensated with monetary damages.

18. Two legal representatives namely Kailash Nath Sharma (brother) and Raj Sharma Bharti (sister) of Kumari Shanta Bharti filed the present appeal for challenging the impugned judgment on the grounds that the learned Reference Court has failed to appreciate the factual position that the chunk of 4 kanals of land in khasra number 344 in Village Khanpur was never handed over to their predecessor-in-interest. It has been contended that the issue in this regard has not at all been discussed or decided by the learned Reference Court. It has been further contended that the Reference Court has misapplied its mind to the facts of the case and refrained from dealing with the issue with regard to handing over possession of 4

kanals of land situated at Khanpur, which part of the land was already and is in possession of the Army and was never handed over to the predecessor-in-interest of the appellants.

19. During the pendency of this appeal, appellant No. 1 Kailash Nath Sharma expired leaving the appeal to be pursued by the surviving appellant No. 2 Raj Sharma (Bharti).

20. I have heard learned counsel for the parties. I have also gone through the record of the Reference Court, the grounds of appeal, and the impugned judgment.

21. So far as the finding of the learned Reference Court that the appellant has not led any evidence regarding the alleged loss suffered due to delay in passing of the award is concerned, the same appears to be well-founded. This Court is not convinced much less persuaded by the submission of the learned Counsel for the appellant that delay of almost twenty years in passing the award of exchange of land in favour of Kumari Shanta Bharti per-se was actionable to render the State liable to pay damages to her. There is no evidence led by the predecessor-in-interest of the appellants on this aspect of the matter.

22. When this court examines the record of the case, it comes to fore that the only evidence led by Kumari Shanta Bharti is her own statement examining herself as a witness. Though Kumari Shanta Bharti has stated that she had

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suffered loss to the tune of Rs. 15 lakhs on account of the delayed passing of the award and that she is also entitled to compensation of Rs. 2 lakhs on account of having been given land at three different places, yet she has not produced any evidence to support and corroborate her aforesaid statement. No evidence has been produced before the Reference Court to establish the costs of construction that was prevailing in the year 1973 when the land of Kumari Shanta Bharti was acquired and the cost of construction at the time when the land at two places was actually allotted to her in terms of the award passed in the year 1994. Kumari Shanta Bharti failed to depose and explain as to in what manner she had suffered loss by allotment of land at two different places. In the absence of any evidence to this aspect and in this regard, it is not open to this Court to evaluate the plea of purported loss suffered by Kumari Shanta Bharti.

23. Apart from the above, in the present case Kumari Shanta Bharti was given land in exchange and she was not awarded any cash compensation, so her contention that she had suffered loss on account of delay in passing of the award could not have been accepted by the Reference Court even if there would have been any such evidence led by Kumari Shanta Bharti. It would have been a question of law as to whether it was permissible in terms of scope and

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purpose of section 18 of the J&K Land Acquisition Act, Svt. 1996 to ask for reference of said nature for adjudication.

24. Otherwise also, this Court is not inclined to accept the submission of the learned counsel of the appellant that delay in awarding alternate land in lieu of acquired land had raised development costs for her. This Court declines to accept the said plea because if the land acquired from her (Kumari Shanta Bharti) was subject to escalation in price, the land given to her in exchange was also subject to equivalent escalation in its market price, therefore, it cannot be stated that Kumari Shanta Bharti had suffered any monetary loss by delayed award. Therefore, the finding of the learned Reference Court in this regard cannot be interfered with. In fact, learned counsel for the appellant has not laid much stress on this contention during the course of hearing.

25. Now, the main point at issue which is required to be determined is as to whether 4 kanals of land in Khasra No.344 situated at Khanpur, awarded in favour of Kumari Shanta Bharti predecessor-in-interest of the appellant, had actually been handed over to her so as to constitute the full satisfaction of award in exchange so as to discharge respondent No. 2 as an indenting authority and respondent No. 1- Collector Land Acquisition PWD, Jammu as an acquisition authority for their statutory obligation to

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compensate the expropriated owner Kumari Shanta Bharti under the scheme of the J&K Land Acquisition Act, Svt 1990 .

26. It is on the aforesaid precise point of law that two appellants have filed the present appeal to assail the judgment of Reference Court. In fact, in the application made under Section 18 of the J&K Land Acquisition Act, Svt, 1990 this issue was emphasized by Kumari Shanta Bharti- predecessor-in-interest of the appellant before respondent No. 2- Collector Land Acquisition PWD Jammu. Not only this, it is at the instance Kumari Shanta Bharti- the predecessor-in-interest of the appellant that the learned Reference Court was implored to frame an additional issue on this aspect of the matter, which came to be framed on 15.01.1998.

27. To support the contention that the chunk of 4 kanals of land falling under Khasra No. 344, situated at Khanpur, was never handed over to her, Kumari Shanta Bharti had not only expressly pleaded so in the application for reference but she has also made a specific assertion in her statement recorded before the Reference Court that this 4 kanals of land in KhasraNo.344 situated in Village Khanpur was never handed over to her. Kumari Shanta Bharti has stated that though the Patwari had shown this patch of land to her but when the Patwari went to the spot

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to conduct demarcation, the Army Authorities claimed that the said land belonged to them as they had acquired the said land. Kumari Shanta Bharti has further stated that she made a complaint in this regard before the Deputy Commissioner Jammu as also before the concerned Minister, but no heed was paid to her complaint. Kumari Shanta Bharti has gone on to state that if the State authorities would have allotted alternate land to her in lieu of this patch of 4 kanals of land then her grievance would have been redressed to her satisfaction notwithstanding the delay in passing of award and bifurcation of alternate land in three different parcels instead of one.

28. When cross-examined on this aspect of the matter, Kumari Shanta Bharti admitted that the land in Khasra Nos. 96 (17 marlas), 62 (8.1kanal) and 344 (4 kanal) was allotted in her favour, but she explained that possession of 4 kanals of land in Khasra No. 344, situated at Khanpur, was never handed over to her, whereas possession of the rest of the land in other two khasra numbers was handed over to her.

29. The respondent No. 2-Collector Land Acquisition PWD Jammu, in his examination-in-chief, stated that possession of 4 kanals of land falling under Khasra No. 344, situated at Village Khanpur, was also handed over alongwith possession of land in two other khasra numbers. However, the cross-examination of the respondent No. 2-Collector

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Land Acquisition PWD Jammu remained inconclusive, and he never appeared before the Court for recording his further cross-examination. The respondent No. 2-Collector Land Acquisition PWD Jammu also did not produce the record relating to the handing over of physical possession of 4 kanals of land situated at Village Khanpur, which was specifically summoned by Kumari Shanta Bharti- the predecessor-in-interest of the appellant by way of her application dated 18.04.2000.

30. In the face of the aforesaid nature of evidence, the assertion of Kumari Shanta Bharti, predecessor-in-interest of the appellant, that she was never handed over possession of 4 kanals of land situated at Khanpur has remained un-rebutted and the same stands established. The statement of the respondent No. 2-Collector Land Acquisition PWD Jammu in his incomplete testimony that this patch of land was also handed over to Kumari Shanta Bharti cannot be relied upon because he had chosen not to appear in witness box so as to complete his cross-examination, therefore, the same does not and cannot qualify as "evidence" in the eyes of law.

31. Apart from the above, the respondent No. 2-Collector Land Acquisition PWD Jammu was in possession of the relevant record, and once Kumari Shanta Bharti had taken a definite stand that she was not handed over possession of 4

kanals of land situated at Village Khanpur in Khasra No. 344, the respondent No. 2-Collector Land Acquisition PWD Jammu was legally obliged to produce the relevant revenue record in this regard to rebut the assertion of the predecessor-in-interest of the appellant. A party in possession of the record, if it fails to produce the same despite the adverse party seeking its production, an inference has to be drawn that if such record had been produced, it would have been un-favourable to the party in possession of the same failing to produce so.

32. Thus an adverse inference has to be drawn against the respondent No. 2-Collector Land Acquisition PWD Jammu for withholding the record relating to handing over possession of 4 kanals parcel of land in khasra number 344 Khanpur otherwise awarded under the award. Thus, from the material on record and the evidence produced before the learned Reference Court, it can safely be stated and held that 4 kanals of land comprised in Khasra No. 344, situated at Village Khanpur, was never handed over to the predecessor-in-interest of the appellant.

33. As already stated, from the statement of Kumari Shanta Bharti- the predecessor-in-interest of the appellant, which remained un-rebutted, it is established that possession of 4 kanals of land situated at Village Khanpur was never handed over to Kumari Shanta Bharti- the predecessor-in-

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interest of the appellant. In fact, this aspect of the matter is further strengthened by a communication/ letter dated 02.07.2005 addressed by the Director, Land Management, Jammu Development Authority, to the Deputy Commissioner, Jammu, a copy whereof is available on the record of the Reference Court and the same has also been annexed by the appellant along with the memo of appeal. As per the said communication/letter, a patch of land measuring 3 kanals and 9 marlas, bearing Khasra No. 164 of Village Khanpur (Nagrota), was identified for allotment in favour of Kumari Shanta Bharti-the predecessor-in-interest of the appellant in place of 4 kanals of land possession whereof was never delivered to her. Vide said communication, the Jammu Development Authority had expressed its no objection to the Govt. for allotment of the said piece of land in favour of Kumari Shanta Bharti-the predecessor-in-interest of the appellant.

34. Learned Reference court, while passing the impugned judgment, has not adverted to the aforesaid aspect of the matter at all. In fact, the learned Reference court has neither dealt with the additional issue framed on 15.01.1998 in its impugned judgment nor considered the evidence led on this issue, thereby landing itself into a grave error.

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35. All these facts go on to show that though vide award dated 05.10.1994, land measuring 13 kanals, comprising 8 kanals 3 marlas under Khasra No. 62 and 17 marlas under Khasra No. 96, situated at Village Sitni, and 4 kanals under Khasra No. 344, situated at Village Khanpur, had been allotted in favour of Kumari Shanta Bharti-the predecessor-in-interest of the appellant in lieu of equivalent land situated at Village Sitni which had been acquired for construction of the road in terms of award dated 19.12.1973, yet the whole of the land given in exchange to her had not been handed over to Kumari Shanta Bharti, inasmuch as the land measuring 4 kanals under Khasra No. 344 at Village Khanpur had never been handed over to her.

36. It was incumbent upon respondent No. 2-Collector Land Acquisition PWD Jammu and the authorities of the State to ensure that the whole of the land allotted in exchange to Kumari Shanta Bharti was duly handed over to her only then it could be stated that the award dated 05.10.1994 stands satisfied. Respondent No. 2-Collector Land Acquisition PWD Jammu was duty-bound to ensure that the land measuring 4 kanals under Khasra No. 344, situated at Village Khanpur, was handed over to Kumari Shanta Bharti- the predecessor-in-interest of the appellant and, if it was not possible to do so on account of its

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occupation by any third party, respondent No. 2-Collector Land Acquisition PWD Jammu was duty bound to ensure that alternate land of equivalent value is provided to Kumari Shanta Bharti-expropriated owner. It is the duty of respondent No. 2-Collector Land Acquisition PWD Jammu under the J&K Land Acquisition Act, Svt. 1990 to ensure that the award is satisfied and that the landowner is given compensation in terms of the award.

37. It would be pertinent to mention here that at the time of the acquisition proceedings from 1973 to 1994 and even till 2019 right to property in the erstwhile State of Jammu & Kashmir was a fundamental right under Article 19 (1)(f) of the Constitution of India as was applicable to the erstwhile State of Jammu & Kashmir. Kumari Shanta Bharti, who is an aggrieved expropriated owner of property was not adequately compensated by handing over to her possession of entire allotted land. Thus, her fundamental right to property stood violated. Even now, the right to property continues to be a constitutional right post J&K Reorganization Act, 2019. Therefore, the respondents, viz. the intending department and the Collector are legally bound to compensate to the successors-in-interest of Kumari Shanta Bharti by providing to them the land equivalent in value to the patch of land that was earmarked for her in terms of the award.

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38. In view of the foregoing discussion, the appeal is allowed to this effect, and the impugned judgment dated 02.12.2013 passed by the learned Additional District Judge, Jammu, is set aside. The respondents are directed to identify 4 kanals of State/JDA land of similar value in place of 4 kanals of land of khasra number 344 Village Khanpur, and make its allotment in favour of the appellant Raj Sharma (Bharti) and legal heirs, if any, of deceased appellant No. 1 Kailash Nath Sharma. The respondents shall further ensure that possession of the same is duly handed over to the appellant. The entire exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order.

39. **Disposed** of as above.

(Sanjay Dhar)
Judge

Jammu
07.10.2026
Madan Verma-Secy.

Whether order is speaking? **Yes**
Whether order is reportable? **Yes**

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KARAM CHAND
2026.10.07 13:34
I attest to the authenticity and integrity of this document