

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

Reserved on: 27.10.2025

Pronounced on: 27.01.2026

Uploaded on: 12.02.2026

Whether the operative part or full
judgment is pronounced: FULL

OWP No. 1208/2012

c/w

OWP No. 1212/2012

CPOWP No. 124/2015

CPOWP No. 227/2018

Vidyawati and others

.....Petitioners

Through: Mr. P. N. Raina, Sr. Advocate with
Mr. J. A. Hamal, Advocate

Vs

Financial Commissioner (Revenue) and others

.....Respondents

Through: Ms. Nazia Fazal, Advocate vice
Mrs. Monika Kohli, Sr. AAG
Mr. Vinod Wali, Advocate

Coram : HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

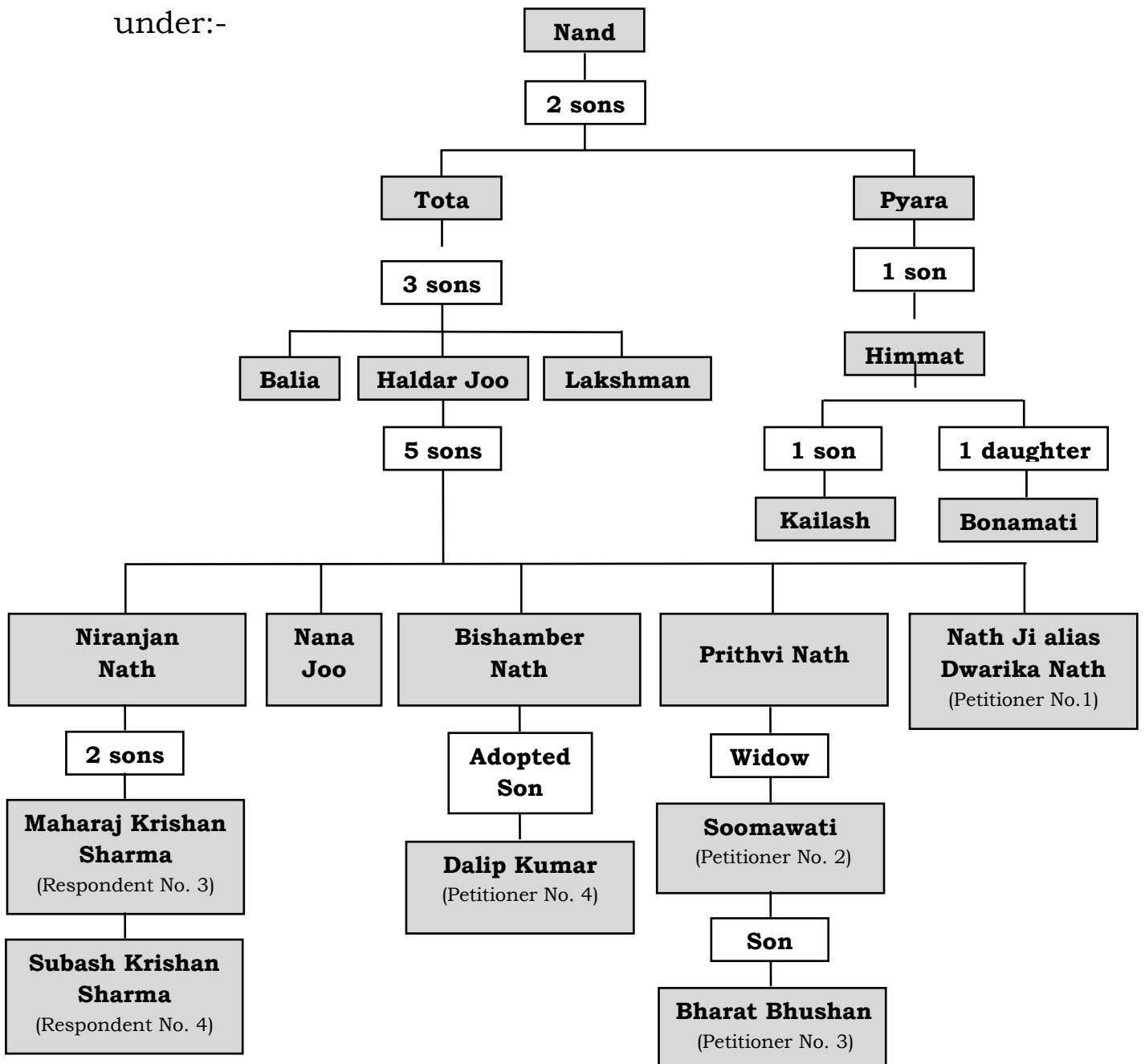
JUDGMENT

OWP No. 1208/2012

01. **Editing of facts by litigants effects the edict of litigation** best defines the present case in which both sides have come charging each other not speaking true and correct facts despite both fully knowing true and correct facts alike while one party assailing and other availing the verdict in question.

02. The petitioners No. 1 to 4 and the respondents No. 3 & 4 come from a same clan. The kinship of the petitioners No. 1 to 4 and the respondents No. 3 to 4 needs to set out before coming to deal with the cause and core of the dispute which has led to the institution of more than decade long pending present writ petition.

03. The common ancestor of the petitioners No. 1 to 4 and the respondents No. 3 to 4 is one Sh. Nand. The pedigree of said Sh. Nand bearing mention of the petitioner No. 1 to 4 as well as the respondents No. 3 to 4 is given as under:-



04. The petitioner No. 1 – Nath Ji alias Dwarika Nath is one of said five sons of Haldar Joo.

05. The petitioner No. 2 - Soomawati and the petitioner No.3 – Bharat Bhushan are widow and son of Prithvi Nath who was also one of said five sons of Haldar Joo.

06. Petitioner No. 4 – Dalip Kumar is actually said to be natural son of said Prithvi Nath but taken in adoption by his brother Bishamber Nath, third son of Haldar Joo.

07. The respondent No. 3 – Maharaj Krishan Sharma and the respondent No. 4 - Subash Krishan Sharma are sons of Niranjana Nath, fourth son of Haldar Joo.

08. In so far as Haldar Joo's fifth son late Nana Joo is concerned, he in turn is said to have four sons, namely, Soom Nath, Mohan Lal, Makhan Lal and Sundri Lal who do not figure as party in the present petition.

09. Facts permitting, if a safe inference is to be drawn from the state of pleadings obtaining on record, then all afore-named five sons of Haldar Joo in one way or other had succeeded to the ancestral property in the sense that Haldar Joo's two brothers Balia (Balaha) and Lakshman had died issueless whereas his cousin Himmat's son Kalish is alleged to have adopted Niranjana Nath, one of five sons of Haldar Joo.

10. The respondent No. 3 – Maharaj Krishan Sharma and the respondent No. 4 - Subash Krishan Sharma, thus, relate themselves to said Kalish as well, in terms of inheritance.

11. It is a claim on the record of this case from the end of the petitioners that long back in the month of March, 1961 there was a family settlement amongst five brothers namely, Niranjana Nath, Nana Joo, Bishamber Nath, Prithvi Nath Ji alias Dwarika Nath- the petitioner No. 1 when the entire property relatable as ancestral property drawn from great grandfather – Nand had come to be apportioned in five equal shares and, accordingly, all five shareholders came to be in settled possession thereof.

12. It is also an accepted position of fact, which may admit of no denial or dispute even from the end of the petitioners or for that matter from the end of the respondents No. 3 & 4 or even from the legal heirs/representatives of Nana Joo, that at no point of time there was any dispute whatsoever obtaining amongst the descendants of Nand which first includes his two sons, namely, **Tota** and **Pyara**, then their next off-springs, namely, **Balia**, **Haldar**, **Lakshman** and **Himmat** followed by their next generation comprised of five sons of Haldar and Kalish sole son of Himmat with respect to the estate which had devolved upon them comprising in particular of the agricultural land all situated in Village Kherman Ganesh Raina (Wanpoh), Tehsil Kulgam, District Anantnag.

13. Khewat Nos. 6, 14, 22, 34 & 35 are relatable to the clan of common ancestor Nand.

14. In January, 2007, the respondents No. 3 & 4, by virtue of a registered General Power of Attorney dated **25.01.2007**, had come to constitute one **Mst. Shahzada Akhter** W/o Mushtaq Ahmed Yattoo R/o Veesu, Tehsil Dooru, District Anantnag as their lawful attorney with respect to land comprised in khasra Nos. 211 (10 kanals 6 marlas), 205 (4 kanals 1 marla) & shamilat land measuring 1 kanal, aggregating to 15.7 kanals, thereby vesting said attorney holder with possession of the aforesaid land with all enabling powers to construct, sell, transfer, mortgage, relinquish, gift etc.

15. The aforesaid fact is a testament to the fact that there was no dispute whatsoever relating to inheritance of the estate in an apportioned status otherwise there could not have been individual reference of khasra numbers with measure of land as well to be mentioned in said General Power of Attorney being so given.

16. So much so, four sons as being legal heir of late Nana Joo, who was one of sons of Haldar Joo, had similarly executed a registered General Power of Attorney dated **25.01.2007** in favour of very said person – Mst. Shahzada Akhter. In terms of this registered General Power of Attorney, **Soom Nath, Mohan Lal, Makhan Lal** and **Sundri Lal** authorized Mst. Shahzada Akhter with respect to land

comprised in khasra Nos. 205 (6 kanal 1 marla), 205 (1 kanal 10 marlas), 211 (10 marlas), 205 (12 marlas) aggregating 8 kanals 13 marlas with identical power as given by the respondents No. 3 & 4 in favour of said attorney Mst. Shahzada Akhter.

17. The petitioner No. 2 – Soomawati, the petitioner No. 3 – Bharat Bhushan and the petitioner No. 3 – Dalip Kumar at their joint end, by virtue of a registered General Power of Attorney dated **13.02.2007**, constituted one Mst. Mugli W/o Haji Gulam Mohd Rather as their joint attorney with respect to land comprised in khasra Nos. 205-B (3 kanal 16 marlas), 205-C (9 kanal 17 marlas), 205-D (14 marlas) aggregating 14 kanals 7 marlas thereby constituting said attorney Mst. Mugli to be in settled possession of the land forming subject matter of the General Power of Attorney with all enabling power and authority.

18. The petitioner No. 1 – Nath Ji alias Dwarika Nath, at his end, by virtue of a registered General Power of Attorney dated **13.02.2007**, also constituted same very Mst. Mugli as his attorney with respect to land comprised in khasra No. 180 (7.9 kanal) along with Shamilat land.

19. In the backdrop of all aforesaid obtaining General Power of Attorneys, very first litigation which sprouted involving the petitioner No. 1 and the respondents No. 3 & 4 is related to execution of one of two General Power of Attorneys dated **13.02.2007** by the petitioner No. 1 – Nath

Ji alias Dwarika Nath in favour Mst. Mugli which came to be questioned by the respondents No. 3 & 4 co-joined by Soom Nath, Mohan Lal, Makhan Lal and Sundri Lal being four sons of Nana Joo in a civil suit filed on **23.10.2008** before the court of learned Sub Registrar (Munsiff), Jammu.

20. In this civil suit, six plaintiffs, including the respondents No. 3 & 4 herein, came forward with averments that they are owners in possession of land measuring 7 kanals 9 marlas comprised in khasra No. 180 with which the petitioner No.1 herein-Nath Ji alias Dwarika Nath, figuring as the defendant No. 1 in the suit, had no concern or right whatsoever. It came to be further averred that the petitioner No. 1 – Nath Ji alias Dwarika Nath is the adopted son of Bishamber Nath whereas in the impugned General Power of Attorney dated **13.02.2007** he has falsely referred to his father name as Haldar Joo.

21. In response to the said civil suit, the petitioner No. 1 - Nath Ji alias Dwarika Nath had submitted his written statement in January, 2009 stating therein that it is he who is in possession of the land forming subject matter of the impugned General Power of Attorney being within his exclusive share in terms of the private partition having taken place amongst the shareholders way back forty years ago.

22. The petitioner No. 1 - Nath Ji alias Dwarika Nath in his written statement came to highlight that the respondents

No. 3 & 4 have also executed the General Power of Attorney in favour of Mst. Shahzada Akhter and so is the case with the plaintiffs No. 2 to 4, and the four sons of Nana Joo who also had executed General Power of Attorney in favour of Mst. Shahzada Akhter.

23. It came to be stated in his written statement by the petitioner No. 1 that the General Power of Attorney executed by the petitioners No. 2 to 4 has not been questioned by the respondents No. 3 & 4 and their co-plaintiffs in the said suit.

24. The petitioner No. 1 - Nath Ji alias Dwarika Nath in his written statement came to dispel question mark with respect to his parentage saying that he was son of Haldar Joo and not the adopted son of his uncle Bishamber Nath who, in fact, had adopted the petitioner No.4 – Dalip Kumar who in turn succeeded Bishamber Nath as his sole legal heir.

25. All the aforesaid four registered General Power of Attorneys are relatable to khasra numbers situated in village Kherman Ganesh Raina (Wanpoh), Tehsil & District Anantnag.

26. As mentioned in the respective Attorneys, the execution and registration of the aforesaid registered General Power of Attorneys were made when the executants

were in state of migration having migrated out from Anantnag (Kashmir) to Jammu.

27. It is then in the year 2010 that so called dispute came to be set into scene when the respondents No. 3 & 4 approached the respondent No.2 – District Magistrate, Anantnag by invoking the provisions of **Jammu & Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997** (in short ***“Migrant Immovable Property Act, 1997”***) with an application addressed against the petitioners.

28. Taking cognizance of said application in which the petitioners herein were named as non-applicants, the respondent No. 2 – District Magistrate, Anantnag had put the petitioners herein on notice by reference to the fact that the respondents No. 3 & 4 have complained against the petitioners that there is an unauthorized execution of attorney by them by reference to estate comprised in khewat Nos. 35, 22, 14 & 6 of village Kherman Ganesh Raina (Wanpoh).

29. Before making the aforesaid application to the respondent No. 2 – District Magistrate, Anantnag, the respondents No. 3 & 4 had first in July, 2009 already approached Tehsildar, Anantnag with an application stating therein that they be given their purported share of possession of land with respect to Khewat Nos. 34 & 35.

30. During pendency of their original application so made by the respondents No. 3 & 4 against the petitioners before the respondent No. 2 – District Magistrate, Anantnag complaining against unauthorized execution of Attorneys, the respondents No. 3 & 4 had made second application again to the respondent No. 2 – District Magistrate, Anantnag for seeking restraint upon the petitioners not to transfer or alienate or provide any attorney to anybody with respect to the land comprised under khewat No. 35, 22, 14, 34 & 6 alleging that the petitioners have already transferred the landed estate purportedly in excess of their share.

31. In response to this second application, the respondent No. 2 – District Magistrate, Anantnag, by virtue of an **Order No.DCA/Mig/Camp(692)948/010 dated 03.01.2011**, had directed maintaining of *status quo* with respect to aforesaid khewat numbers' related land.

32. While the respondent No 2 – District Magistrate, Anantnag was seized of the application so made by the respondents No. 3 & 4 with respect to so called unauthorized execution of attorneys by the petitioners relatable to khewat Nos. 35, 22, 14 & 6, an application under **section 5** of the **Migrant Immovable Property Act, 1997** came to be made by the respondents No. 3 & 4 complaining therein that that one **Gh. Mohammad Rather, Nazir Ahmad Khan, Mohammad Ramzan Bhat & Ab. Rehman Bhat** are in unauthorized occupation of the

property share of the respondents No. 3 & 4 from where they need to be evicted.

33. The petitioners, on their part, in response to the application so made under section 5 of the Migrant Immovable Property Act, 1997 by the respondents No. 3 & 4 seeking eviction of unauthorized occupants from the purported migrant property, came up with the reply stating therein that the application so made is not maintainable because of inconsistent pleas made therein, all being baseless and false.

34. It came to be disclosed by the petitioners before the respondent No. 2 – District Magistrate, Anantnag that there is a civil suit in the court of Sub Registrar, Jammu preferred by the respondents No. 3 & 4 challenging therein the *locus-standi* of the petitioners in executing the General Power of Attorneys in view of which the respondent No. 2 – District Magistrate, Anantnag himself had pended the proceedings on the pretext that since the matter is pending in the civil court so the outcome of the matter from the civil court is to be awaited and, as such, the application preferred by the respondents No. 3 & 4 invoking section 5 of the **Migrant Immovable Property Act, 1997** seeking eviction of the so named unauthorized occupants was not maintainable.

35. In their reply, the petitioners came to narrate that how the respondents No. 3 & 4's father Niranjana Nath was related as brother to Nana, Bishamber Nath, Prithvi Nath

and the **petitioner No. 1-Nath Ji** all being sons of Haldar Joo and how the respondents No. 3 & 4's father Niranjan was purportedly related as adoptive son of Kailash S/o Himmat, the cousin of Haldar Joo.

36. By virtue of an order **No. DCA/Mig/Camp(692) 010/1166** dated **11.10.2011**, later on corrected to be **19.12.2011** by virtue of a corrigendum No. **DCA/Mig/Camp(692)010/1176** dated **21.12.2011**, the respondent No. 2 – District Magistrate, Anantnag came to dispose of said application of the respondents No. 3 & 4 made under section 5 of the Migrant Immovable Property Act, 1997 with the following directions:-

“Hence till the issue is settled in Civil Court, it will be in the interest of the parties that re-course is taken to Section 5 of the Jammu & Kashmir Migrant Immoveable Property (Preservation, Protection and Restrain on Distress Sales) Act, 1997. It is thus ordered that Tehsildar Anantnag shall take possession of the whole migrant property and manage the property as is envisaged under the Jammu & Kashmir Migrant Immoveable Property (Preservation, Protection and Restrain on Distress Sales) Act, 1997. Stay order if any is vacated and file consigned to records.”

37. In his said order dated **11.10.2011**, later on re-dated **19.12.2011**, the respondent No. 2 – District Magistrate, Anantnag came to refer that there is **32.19 kanals** of land relatable to khewat No. 35 in which the respondents No. 3 & 4 hold share of 19.15 kanals and that the General Power of Attorneys executed by the petitioners are in excess of the share and that the land in question is in

occupation of the attorney holders of the petitioners. It is only this extent of property which came to bear mention and identification in the entire order dated **11.10.2011**, later on re-dated **19.12.2011**, by the respondent No. 2 – District Magistrate, Anantnag.

38. Aggrieved of the respondent No.2 – District Magistrate, Anantnag's said order dated **11.10.2011**, later on re-dated **19.12.2011**, an appeal under section 7 of the Migrant Immovable Property Act, 1997 came to be preferred by the petitioners before the Financial Commissioner (Revenue), J&K on **03.01.2012** who, by virtue of his order No. 669-70/FC/AP dated **09.01.2012**, is said to have stayed the operation of the impugned order of the respondent No. 2 – District Magistrate, Anantnag.

39. The petitioner No. 1-Nath Ji alias Dwarika Nath joined by the petitioner No. 3 – Bharat Bhushan by virtue of an application dated **11.06.2012** filed before the Deputy Commissioner, Anantnag had solicited the release of their residential building in view of the stay of the respondent No. 2 – District Magistrate, Anantnag's order dated No. **DCA/Mig/Camp(692)010/1166** dated **19.12.2011**.

40. In their said application, it came to be referred by the petitioners No. 1 & 3 that one Nazir Ahmad Khan S/o Gh. Hassan Khan had intruded in occupation of the major portion of the house by having broken the locks of two rooms and this intrusion by Nazir Ahmad Khan was despite

the order of the respondent No. 2 – District Magistrate, Anantnag upon Tehsildar, Anantnag to take the property under possession.

41. In response to said application of the petitioners No. 1 & 3, the respondent No. 2 – District Magistrate, Anantnag had directed the Tehsildar concerned to proceed on spot personally and take immediate appropriate action as per law which resulted in action taken on spot by breaking open the lock of said Nazir Ahmad Khan.

42. The Financial Commissioner (Revenue), J&K, by virtue of his final order dated **25.07.2012**, came to dispose of the appeal of the petitioners in the manner and effect which is reproduced as under:-

“ORDER

The instant appeal has been filed against the order of District Magistrate Anantnag wherein he has ordered that till the dispute between the parties is settled in the Civil Court, Tehsildar Anantnag shall take possession of the Migrant property in dispute under the provisions of section 5 of the Jammu & Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997.

The order of the District Magistrate is only an interim order and does not confer any right to any part in any manner whatsoever. The order is operative till only the dispute is settled between the parties in the Civil Court and it in consonance with the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997.

In view of the above the appeal is dismissed and interim directions issued vide No. 660-68/FC-AP dated 09.01.2012 stands vacated.

File shall be consigned to records after due completion.”

43. It is by reference to aforesaid two adjudications so made under the Migrant Immovable Property Act, 1997 that the present writ petition **OWP No. 1208/2012** came to be preferred by the four petitioners, led by the petitioner No. 1 – Nath Ji alias Dwarika Nath, who at the relevant point of time was the only surviving son of Haldar Joo with rest of his four brothers being no more whereas the petitioners No. 2 & 3 are successors-in-interest of late Prithvi Nath, the petitioner No. 4 being successors-in-interest of Bishamber Nath and the respondents No. 3 & 4 being sons of Niranjana Nath. Four sons of Nana Joo being not party to the dispute and, thus, not figuring in the present writ petition.

44. By virtue of an order dated **29.08.2012**, this Court came to direct *status-quo* on spot to be maintained, further supplemented by a direction given in an order dated **15.07.2013** directing the parties to adhere to the interim order dated **29.08.2012** and the official respondents directed to ensure that the order is complied in letter and spirit.

45. During the pendency of present writ petition, the petitioner No. 1 – Nath Ji alias Dwarika Nath came to expire on **22.11.2020** with his legal representatives, namely, **Vidyawati** (wife), **Ashok Kumar Pandita** (son), **Jyoti Pandita** (daughter) & **Seema Pandita** (daughter) coming on record in terms of an order dated **06.04.2022**.

46. In the writ petition, the petitioners have come seeking quashment of the final order dated **25.07.2012** passed by the respondent No. 1-Financial Commissioner (Revenue), J&K in dismissing the appeal of the petitioners preferred against said original order dated **11.10.2011**, later on re-dated **19.12.2011**, of the respondent No. 2 – District Magistrate, Anantnag, and also of the quashment of the original order **dated 11.10.2011**, later on re-dated **19.12.2011**, of the respondent No. 2 – District Magistrate, Anantnag, by terming both as arbitrary, illegal and unconstitutional apart from being dehors the Migrant Immovable Property Act, 1997.

47. In the writ petition from the end of the petitioners, it has come to be averred that Niranjana Nath, the father of the respondents No. 3 & 4, was real brother of the petitioner No. 1 – Nath Ji alias Dwarika Nath, Prithvi Nath, Bishamber Nath and Nana Joo, all being sons of Haldar Joo.

48. Reference is made in the writ petition to father Haldar Joo's cousin Himmat without anything further stated about him in terms of his son Kalish by whose reference the respondents No. 3 & 4 claim their father Niranjana Nath to be adopted son.

49. It has come to be averred in the writ petition that entire estate, without dilating further as to whether the said estate comprised only of inheritance of Haldar Joo or of his two brothers – Balia and Lakshman and his cousin Himmat,

by way of family settlement comprised of five shares, has taken place by virtue of a writing on **12.03.1961** as referred in the writ petition along with the documents annexed to stress upon the point that there was no scope for any tussle of succession amongst the shareholders i.e., the petitioner No. 1 and his four brothers and their respective successors-in-interest.

50. From the end of the petitioners, it has been stated in the writ petition that the Clan's original residential house in village stood long apportioned into two with half share going to Niranjn Nath, the father of the respondents No. 3 & 4 and other half going to Nana Joo, the father of Soom Nath, Mohan Lal, Makhan Lal and Sundri Lal.

51. By reference to three other brothers, namely, Bishamber Nath, Prithvi Nath and the petitioner No. 1 – Nath Ji alias Dwarika Nath, construction of a residential house by converting existing granary site has been claimed to highlight the separation of habitation having taken place amongst the brothers. It has further been stated in the writ petition that the respondents No. 3 & 4's father Niranjn Nath had, in addition, constructed a separate residential house in the village somewhere in the year 1980 and so is the case with other brother Nana Joo.

52. The other three brothers led by the petitioner No. 1 – Nath Ji alias Dwarika Nath are said to have constructed a new house in the year 1972 in order to accommodate their

respective families about which the documentary permission is said to have been availed in the name of Prithvi Nath alone, whereas the insurance of said house property being done in the name of the petitioner No. 1 – Nath Ji alias Dwarika Nath and Prithvi Nath.

53. The residential house constructed by conversion of a granary is said to have been given to the petitioner No. 4 – Dalip Kumar whereas the residential house constructed in year 1972 is said to have been retained by the petitioner No. 1 along with Prithvi Nath upon whose death his share came to be in use and occupation of the petitioners No. 2 & 3 along with the petitioner No. 1 – Nath Ji alias Dwarika Nath in his own share and to this effect document dated **09.05.1986** executed between the petitioner No. 1, Prithvi Nath and the petitioner No. 4 – Dalip Kumar stands referred in the writ petition besides being annexed with the writ petition.

54. The petitioners have stated as to how even after migration from Kashmir in the year 1990, there was no dispute of any kind whatsoever amongst the sons of Haldar Joo.

55. Prithvi Nath is said to have expired in the year **2004** whereas Niranjana Nath is said to have expired in the year **2006**.

56. As per the narrative set out in the writ petition, it is only after the death of **Niranjan Nath**, the father of the respondents No. 3 & 4 that said two respondents had indulged in parting with their share of property by execution of documents which included General Power of Attorney executed on **25.01.2007** about which a reference has been made herein earlier.

57. On the same basis of claim, the petitioners are said to have executed the requisite documents in parting with their share of property by executing registered General Power of Attorneys.

58. The petitioners come forth in making mention that the respondents No. 3 & 4 had made an application to Tehsildar, Anantnag in **2009** pleading contrary facts meaning to unsettle a long settled property position by asking for share of land falling in khewat **Nos. 34 & 35** by manipulating reports from the revenue field agency contrary to the particular recorded position.

59. Speaking from their property perspective, the petitioners have stated that their residential houses had been trespassed against which they had filed applications in the year **2005** followed by an application in June, **2012**.

60. The petitioners also refer to the fact of pending civil suit having been preferred by sons of Nana Joo joined by the

respondents No. 3 & 4 before the court of learned Sub Registrar (Munsiff), Jammu.

61. The petitioners have averred that from 2005 onwards they have been frequently visiting their native village Wanpoh residing in their respective residential houses during summer.

62. In the aforesaid backdrop, the impugned proceedings along with the impugned order before and by the respondent No. 2 – District Magistrate, Anantnag has been assailed on the grounds as set out in para 16 (a) to (c).

63. In the grounds of challenge, the petitioners have referred that there were no facts and circumstances which warranted indulgence of the respondent No. 2 – District Magistrate, Anantnag, as solicited by the respondents No. 3 & 4, who upon being apprised by the petitioners about true state of facts and circumstances ought to have withdrawn the indulgence by referring the parties to the civil suit in which lis was already pending.

64. The petitioners have highlighted that once the respondents No. 3 & 4 themselves have sold their share of agriculture land, said fact meant that there was no dispute with respect to share holding.

65. The manner in which the date of impugned order originally given on 11.10.2011, later on re-dated as 19.12.2011 by the respondent No. 2 – District Magistrate,

Anantnag has also been highlighted to show that the proceedings were conducted by the respondent No. 2 – District Magistrate, Anantnag in a very shaded manner.

66. The respondents No. 3 & 4 came forward with a reply filed on **01.10.2012** to the writ petition in which the two respondents came to stress upon the fact that their father-Niranjan Nath was given in adoption to Kalish and, accordingly, their father-Niranjan Nath had acquired inheritance of said Kalish by way of mutation attested which property further passed unto them from their father-Niranjan Nath.

67. The respondents No. 3 & 4 have come attacking the petitioner No.1- Nath Ji alias Dawarika Nath that his parentage is not relatable to Haldar Joo as he was adopted by Bishamber Nath, the brother of Haldar Joo and to this effect the school record, service documents, state subject certificate of the petitioner No. 1 are being referred to.

68. With respect to the petitioner No. 4 – Dalip Kumar, the respondents No. 3 & 4 refer him to be son of Prithvi Nath and not the adopted son of Bishamber Nath.

69. The underlying aim and objective of the writ petition filed by the petitioners is said to be questioning the mutation of inheritance attested by reference to Kalish in favour of Niranjan Nath and then unto the respondents No. 3 & 4.

70. The respondents No. 3 & 4 in their reply mention that total ancestral property was divided in two equal shares of which one share was inherited by grand-parents of the answering respondents No. 3 & 4 and one share by legal heirs of Haldar Joo and Balia (Balaha). The respondents No. 3 & 4 further claim one share out of the land inherited by Balia (Balaha) and Haldar Joo as sons of Tota on the basis of purported claim that they i.e., the respondents No. 3 & 4 are the registered tenants/cultivators. The respondents No. 3 & 4 further refer that some other land was personally acquired by their ancestors about which mutation has been attested and the same cannot be called in question.

71. The respondents No. 3 & 4 refer that the writ petition filed by the petitioners entail disputed questions of fact for which writ jurisdiction is not a proper forum and for that civil court should have been approached.

72. The writ petition is challenged to be highly time barred filed after so many decades for laying claim over ancestral property beyond the shares as disclosed in the mutation/s that too without challenging the mutation/s. The respondents No. 3 & 4 in their reply have referred to mutation Nos. 27 & 98 related to inheritance of and from Kalish which mutations are said to have been questioned.

73. The petitioner No. 1-Nath Ji alias Dawarika Nath has been attacked personally by the respondents No. 3 & 4 reference to the fact that he has retired as a Deputy

Director, Animal Husbandry and by exploit of his said govt. position is bent upon to manipulate the facts and circumstances by claiming the property of Halдар Joo.

74. The respondents No. 3 & 4, in their long drawn reply to the writ petition, have come up with the repetition of emphasis that they are short of their share whereas the petitioners are bent upon to alienate the property held in excess of their share and on that basis are meaning to defend the indulgence of the respondent No. 2 – District Magistrate, Anantnag under the Migrant Immovable Property Act, 1997.

75. This Court has opened this judgment with an educated observation that both sides have resorted to editing of facts at every level and which is confirmed from the very fact that the respondents No. 3 & 4 allege and assert that the petitioner No. 1-Nath Ji alias Dwarka Nath was not son of Halдар Joo but was an adopted son of Bishamber Nath. In this regard, the respondents No. 3 & 4 refer to the alleged school and service related documents of the petitioner No. 1. This fact has not been adverted to by the petitioners in particular the petitioner No.1-Nath Ji alias Dawarika Nath in their entire writ petition.

76. This Court is not meaning to hold the fact that the petitioner No. 1- Nath Ji alias Dawarika Nath could not claim himself to be the natural son of Halдар Joo and equally not related to Bishamber Nath in terms of parentage

by any formal adoption so as to link him in terms of his parental lineage to Bishamber Nath instead of Haldar Joo but nevertheless, there should have been a candid statement of fact in the writ petition upfront to said effect instead of withholding the said aspect.

77. On the other hand, the respondents No. 3 & 4 are equally found playing smart and shrewd with facts in not disclosing as to whether their father –Niranjan Nath was natural son of Haldar Joo or not and further whether their father- Niranjan Nath's adoption by Kalish was on the basis of any formal adoption deed or in the same manner as the petitioner No. 1 is alleged to have been adopted by Bishamber Nath.

78. The respondents No. 3 & 4 are attempting to screen away the fact that if their father-Niranjan Nath is to be related to his adoptive father – Kalish, then how come in their reply they are making a very double faced averment that their father Niranjan Nath was also entitled to succession from his natural father side without disclosing said father's name for sake of identify. Obviously, said natural father of Niranjan Nath is none other than Haldar Joo.

79. The respondents No. 3 & 4, being co-plaintiffs with four sons of Nana Joo, are coming forward with a claim to oust the petitioner No. 1-Nath Ji alias Dawarika Nath from succession by reference to Haldar Joo and assailing the

execution of General Power of Attorney by him but for the reasons best known to the respondents No. 3 & 4 and their co-plaintiffs, the suit has been restricted only for the declaration to assail the General Power of Attorney dated **13.02.2007** executed by the petitioner No. 1-Nath Ji alias Dawarika Nath without seeking any further declaration about the status of the estate related to them.

80. The respondents No. 3 & 4 in their reply to the writ petition have come forward stating that their father-Niranjan Nath was personally cultivating the ancestral property of his original father as a tenant under the Agrarian Reforms Act, 1976 but without bothering to disclose the name of said original father, but simultaneously claiming right of succession under him.

81. The respondents No. 3 & 4 have not come forward giving any whisper of detail as to how much ancestral property was divided so to say in two equal shares and whether any effect was given in the revenue record to said alleged partition.

82. When this Court bears in perspective the aforesaid backdrop of blurred facts and circumstances, this Court bears and suffers no iota of doubt that the act on the part of the respondents No. 3 & 4 in invoking and exploiting the proceedings under the Migrant Immovable Property Act, 1997 was a sham pretext under the garb of which what actually was meant to be intended and attained was the re-

alignment and re-defining of the shares in terms of succession to the estate relatable to Halder Joo and Himmat.

83. This position gets confirmed from the very notice which was put to the petitioners from the end of the respondent No. 2 – District Magistrate, Anantnag for seeking their appearance before him in which notice it was being recited that the respondents No. 3 & 4 have complained about unauthorized execution of General Power of Attorney by reference to khewat Nos. 35, 22, 14 & 6 with an intent to transfer or alienate the same through attorney holders.

84. This nature of dispute *per se* did not qualify to be cognizable by the respondent No. 2 – District Magistrate, Anantnag under the Migrant Immovable Property Act, 1997.

85. In a judgment titled “**Pushkar Nath Koul Vs State of J&K and others**” **2008 JKJ(3) 325**, this Court has already held that the property dispute amongst the co-sharers who are Kashmiri migrants is not meant to be dealt with under the Migrant Immovable Property Act, 1997.

86. It is only by introduction of an application filed on **18.03.2011** by purported reference to section 5 of the Migrant Immovable Property Act, 1997 by reference to unauthorized occupants, namely, Gh. Mohammad Rather, Nazir Ahmad Khan, Mohammad Ramzan Bhat & Ab. Rehman Bhat that the respondents No. 3 & 4 were able to

engage the respondent No. 2 –District Magistrate, Anantnag on the basis whereof impugned order came to be passed.

87. The respondent No. 2– District Magistrate, Anantnag in his said order dated 11.10.2011, later on re-dated 19.12.2011, does not identify as to how land comprised in khewat No. 35 could become the matter of his statutory attention and indulgence. In the entire order, the names of the persons who were alleged to be unauthorized occupants have missed mention by the respondent No. 2 – District Magistrate, Anantnag and reason for the said miss is that the respondent No. 2 – District Magistrate, Anantnag perhaps was well aware of all along that from the end of the petitioners as well as from the end of the respondents No. 3 & 4, their respective attorneys were at play in attending to the respective properties with respect to which they had come to be constituted as attorneys.

88. Thus, serious legal lacuna which came to attend the application of mind on the part of the respondent No. 2 – District Magistrate, Anantnag in making his impugned order dated 11.10.2011, later on re-dated 19.12.2011, is that what was originally complained before him was left undealt by him and by a blanket order the property left undefined in the order was directed to be taken over in possession by Tehsildar, Anantnag. In fact, Tehsildar, Anantnag came to be directed to take possession of whole migrant property and manage the property without disclosing as to what is the

identification and extent of whole migrant property which is to be so taken in possession by Tehsildar, Anantnag.

89. The passing of impugned order dated 11.10.2011, later on re-dated 19.12.2011 by the respondent No. 2 – District Magistrate, Anantnag came to take place while he acknowledged that there is a civil suit going on between the petitioners and the respondents No. 3 & 4 before the civil court and, therefore, that should have been enough good reason for the respondent No. 2 – District Magistrate, Anantnag to deny any further indulgence in the matter in any manner and to any extent.

90. The very essence of the Migrant Immovable Property Act, 1997 is resting upon the doctrine of ***“parens patriae”*** under which the State becomes the parent like guardian of the person and properties of the subject/s who cannot take care of his/her/their person as well as his/her/their property for the circumstances beyond their control.

91. The Migrant Immovable Property Act, 1997 holds its enactment to said position of Kashmiri Pandits who suffered exodus from Kashmir Valley leaving their home and hearth in order to ensure their bare physical survival with their properties, both moveable and immoveable, rendered vulnerable to grab and grub for protecting which the Migrant Immovable Property Act, 1997 came in to ensure the safety and security of the abandoned properties of

Kashmiri migrants to be duly taken care of by none else than the State itself.

92. The Migrant Immovable Property Act, 1997 is not meant to be exploited for settling property dispute/s amongst the co-owners/co-sharers or successors-in-interest of Kashmiri Migrants but which exactly and actually was intended to be done by the respondents No. 3 & 4 through the medium of an application so made to the respondent No. 2 – District Magistrate, Anantnag.

93. The impugned order dated 11.10.2011, later on re-dated 19.12.2011 of the respondent No. 2 – District Magistrate, Anantnag being legally and factually faulty ought to have been examined under appellate jurisdiction by the respondent No.1 – Financial Commissioner (Revenue), J&K who instead also acted mechanically by referring to order dated 11.10.2011, later on re-dated 19.12.2011 of the respondent No. 2 – District Magistrate, Anantnag as an innocuous one leaving the petitioners constrained to come up with the present writ petition.

94. Thus, this Court is of the view that the entire course of proceedings initiated before the respondent No. 2 – District Magistrate, Anantnag at the instance of the respondents No. 3 & 4 leading to the passing of the impugned order dated 11.10.2011, later on re-dated 19.12.2011 by the respondent No.2 – District Magistrate, Anantnag along with the order dated 25.07.2012 of the

respondent No. 1 – Financial Commissioner (Revenue), J&K were misconceived right from the inception which warrant to be set aside and are, accordingly, set aside leaving it free for the petitioners as well as the respondents No. 3 & 4, and whomsoever other legal heirs/representatives may be to settle their property dispute/s if any existing or subsisting by resorting to proper forum of Civil/Revenue Court, be it under the Code of Civil Procedure, 1908 or the Jammu & Kashmir Land Revenue Act, Svt., 1996.

95. In view of the fact this Court has come to set aside the order dated 11.10.2011, later on re-dated 19.12.2011 of the respondent No.2 – District Magistrate, Anantnag along with the order dated 25.07.2012 of the respondent No. 1 – Financial Commissioner (Revenue), J&K, any property whatsoever which came to be taken in possession by Tehsildar, Anantnag relatable to the petitioners as well as the respondents No. 3 & 4 be restored back to the position as it was obtaining before passing of the order dated 11.10.2011, later on re-dated 19.12.2011 of the respondent No.2 – District Magistrate, Anantnag along with the order dated 25.07.2012 of the respondent No. 1 – Financial Commissioner (Revenue), J&K.

96. Nothing observed herein shall be referred to be any observation on merits and demerits of respective claims of the petitioners' vis-à-vis the respondents No. 3 & 4 or vice-versa in the matter of inheritance/succession for which the

adjudication of the Civil Court/ Revenue Court is going to determine the actual status.

97. ***Disposed of.***

OWP No. 1212/2012

98. The adjudication of the writ petition **OWP No.1208/2012** is to govern the adjudication of this writ petition **OWP No. 1212/2012** in view of the fact that the petitioner herein-Shambu Nath Koul is claiming under respondent No.9-Dalip Kumar who is one of the petitioners in **OWP No.1208/2012**, and is seeking the quashment of the adjudication made by the Financial Commissioner (Revenue), J&K read with adjudication made by the District Magistrate, Anantnag with respect to which this Court has returned the final verdict in **OWP No.1208/2012**.

CPOWP No. 124/2015 & CPOWP No. 227/2018

99. In the light of the disposal of the aforesaid two writ petitions, these two contempt petitions shall also stand disposed of accordingly.

(Rahul Bharti)
Judge

Jammu
27.01.2026
Muneesh

Whether the judgment is speaking : **Yes**

Whether the judgment is reportable : **Yes**