

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

CM(M) No. 24/2026

Union Territory of J&K

...Petitioner(s)

Through: Mr. Jahingeer Ahmad Dar, GA

Vs.

Ali Mohammad Dar and Ors.

...Respondent(s)

Through:

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER

30.01.2026

1.The Executive Engineer, Public Health, Engineering (PHE) Division Chadoora, Budgam, purportedly acting in the name, for and on behalf of the Union Territory of J&K, is meaning to assail an order dated **31.12.2025** of the Court of learned Sub-Judge (Chief Judicial Magistrate), Budgam, which has been passed in an ongoing execution proceedings pursuant to judgment and decree dated **06.12.2021** in a civil suit titled “**Ali Mohammad Dar vs. Commissioner Secretary PHE Irrigation and Flood Control and Ors.**”, in which the

Executive Engineer, PHE Division, Chadoora was figuring as the defendant No.3 so as to be the judgment debtor No.3.

2. The contesting respondent herein, namely Ali Mohammad Dar, is the decree-holder in whose civil suit the judgment and decree dated **06.12.2021** came to be passed by the Court of learned Sub-Judge, Budgam. The suit was instituted on **29.08.2015** in which the following defendants were named:-

- i. Commissioner Secretary to Government PHE, Irrigation and Flood Control of J&K Civil Secretariat at Jammu/Srinagar.
- ii. Chief Engineer PHE Kashmir.
- iii. Executive Engineer PHE Division Chadoora.
- iv. Collector Land Acquisition (ACR), Budgam.

3. In his civil suit, the contesting respondent-Ali Mohammad Dar came up with factual averments that his land measuring 10 marlas comprised in Survey No. 962/1 min (2 ½ marlas), 962 min (2 ½ marlas) and 963 (5 marlas) in Charisharief, Budgam came to be appropriated for the public purpose of construction of a road leading to RCC Service Reservoir Charisharief. It

came to be further pleaded that for the appropriation of said suit land, an acquisition exercise was actually intended to be undertaken under the **Jammu and Kashmir Land Acquisition Act, Samvat 1990** with issuance of a notification dated **24.09.2011** under **Section 4(1)** of the said Act. The contesting respondent further came to plead that the exercise in terms of **Section 48** the **Jammu and Kashmir Land Acquisition Act, Samvat 1990** was carried forward when the defendant No.4-Collector Land Acquisition (ACR) Budgam, by virtue of his communication dated **22.10.2011**, had come to figure out the prevalent market rate of the land in the area and in that regard referred the rate to be Rs. 3.50 lac approved on **15.06.2006** in a private negotiation which is said to have taken place with the contesting respondent and the Indenting Department through Executive Engineer, the defendant No.3.

4. The cause of action which had led the contesting respondent to take recourse to the civil court in the form of filing said civil suit was the purported delaying tactics on the part of the defendants in settling the land compensation payable in favour of the contesting

respondent by acting on the pretext that one of his son had come to be engaged as a daily wager in lieu of the compensation which disentitled the contesting respondent to insist for the compensation.

5. It was pleaded in the suit that the land had been acquired in 2011, whereas the tone and tenor of the plaint is as if the land had been appropriated in the year 2006 for the requisite purpose by reference to which date the proposed compensation of Rs. 3.50 lac was mooted which was being objected to by the contesting respondent.

6. The contesting respondent thus asked for a decree against the named defendants to the following effect:-

a. A decree for mandatory injunction may be passed in favor of plaintiff against defendants commanding official defendants especially defendant No.4 to determine compensation for the suit land above described acquired in the year 2011 as per the then prevalent market rate per kanal with interest rate of 10% per year along 15% percent Jabirana.

b. Any other relief as may be deemed fit and necessary in the attending facts and circumstances of the case at hand may also be granted in favor of plaintiff.

7. Going by the facts on record, it seems that the defendants had chosen to go unrepresented in the said suit as a result whereof, by virtue of an order dated **18.06.2016**, they came to be proceeded ex-parte and the recording of ex-parte evidence on behalf of the contesting respondent as plaintiff came to take place to the effect that the contesting respondent was the holder of the land in reference which had been acquired for the purpose of construction of road leading to RCC Service Reservoir, Budan Bal, Charisharief but without finalization of any acquisition proceedings.

8. From the end of the contesting respondent, the Patwari concerned was summoned to depose that revenue record annexed with the plaint was as per the record of Jamabandi.

9. The ex-parte evidence so produced led the trial court of learned Sub-Judge, Budgam to a finding of fact that the suit land is the contesting respondent No.1's land which has been appropriated for public purpose of

construction of road leading to RCC Service Reservoir, Charisharief without payment of compensation.

10. Therefore, a decree of mandatory injunction came to be issued in favour of the contesting respondent No.1 with a direction to the defendant No.4-Collector Land Acquisition (ACR), Budgam to determine the compensation for the suit land of 10 marlas comprised in aforesaid khasra Nos. acquired in the year 2011, as per then prevalent market rate per kanal with interest @10% per year along with 15% Jabirana.

11. Thus, vide judgment and decree dated **06.12.2021**, the Court of learned Sub-Judge, Budgam had come to place a mandatory injunction only upon the defendant No.4-Collector Land Acquisition (ACR), Budgam.

12. The said judgment and decree remained unquestioned and unassailed from the end of the defendants/judgment-debtors in the backdrop of which the contesting respondent, as decree holder, initiated execution proceedings in **March 2022** before the executing court of learned Sub-Judge, Budgam.

13. By reference to the execution proceedings so initiated in the matter, the defendant No.3/judgement-debtor

No.3-Executive Engineer PHE (Jal Shakti) Division, Chadoora came to address the Sub-Divisional Magistrate (Collector Land Acquisition), Chadoora with a communication No. **PHEDC/4253-55** dated **29.12.2025** referring therein that as per Tehsildar Charisharif's letter No. **TCS/OQ/2025-26/348-49** dated **22.12.2025**, it is reported that as against 10 marlas of proprietary land of contesting respondent, only 7 marlas of land is being possessed by the Department and in this regard the matter had been taken up with defendant No.4/judgment-debtor No.4-Collector Land Acquisition, Chadoora by way of communication No. **PHEDC/4275-78** dated **29.12.2025**, and, thus, solicited a corresponding amendment/rectification about the actual extent of land with respect of which assessment of compensation and acquisition is to relate for and to be restricted and that being 7 marlas of land instead of 10 marlas.

14. The defendant No.3/judgment-debtor No.3-Executive Engineer, PHE Division, Chadoora was activated to address the aforesaid communication when the defendant No.4/judgment-debtor No.4-Collector Land Acquisition, Chadoora vide his communication

No. **SDMC/LAS/2025-26/214** dated **26.12.2025** addressed to the defendant No.3/judgment No.3-Executive Engineer, PHE Division, Chadoora forwarded copy of the demarcation report and the relevant revenue record submitted by Tehsildar Charisharief for the obvious purpose of settlement of the case of the contesting respondent in connection with the ongoing execution proceedings.

15. One of the documents accompanying the defendant No.4/judgment-debtor No.4-Collector Land Acquisition (ACR) Budgam's communication dated **26.12.2025** in a communication No. **662/NTCS/Gnr1/2025-26** dated 22.12.2025 submitted by the Naib Tehsildar Charisharief to the Tehsildar Charisharief stating therein that only 7 marlas of proprietary land comprising khasra No.962 min had come under alignment of stair case constructed by Jal Shakti (PHE), Department for ingress and egress to water tank reservoir but as per the record with respect to khasra No. 962 min the contesting respondent is recorded to be only with respect to 5 marlas 66 Sq. feet and one Rahmti D/o Samad Dar for 1 marlas 206 Sft out of 7 marlas of the land under actual use and occupation although

entire 10 marlas of land was taken over from the contesting respondent. Following said report of Naib Tehsildar, the Tehsildar Charisharief had apprised the defendant No.4/judgment No.4-Collector Land Acquisition Chadoora about state of affairs.

16. The executing court of learned Sub-Judge (Chief Judicial Magistrate), Budgam by virtue of an order dated **05.04.2025** came to register its serious concern that the execution petition is pending from **18.03.2022** onwards without heading towards its logical end of due execution with the judgment-debtors seeking time on repeated occasions without any productive proceedings taking effect and thus put the judgment-debtors on a caveat that in the event of failure on their part to carry out compliance, the judgment-debtors shall suffer execution in terms of their arrest under **Order 21 Rule 37(2)** of the Code of Civil Procedure.

17. Instead of reporting themselves in compliance to the decree, the judgment-debtors came to plead that there is no injunctory direction obtaining upon the judgment-debtors No.2&3 in the context of releasing or disbursing of the compensation amount and that the contesting respondent's son Mohd. Shafi was actually engaged in

2003 as a need based casual labourer in lieu of monetary compensation. By resort to this plea, the judgment-debtors intended to excuse themselves from the liability.

18. In terms of said judgment and decree **06.12.2021**, the trial court of learned Sub-Judge, Budgam has issued a mandatory injunction unto the Collector Land Acquisition (ACR), Budgam. who was defendant No.4 in the suit, to determine compensation for the land measuring 10 marlas comprising Survey No. 962/1 min (2 ½ marlas), 962 min (2 ½ marlas), 963 (5 marlas) situated at Charisharief Budgam acquired in year 2011 as per the then prevalent market rate per kaal with interest at the rate of 10% per year along with 15% Jabirana.

19. The mandatory injunction decree was issued by the trial court pursuant to the fact that a notification under **Section 4** of the **Jammu and Kashmir Land Acquisition Act, Samvat 1990**, had been issued for the purpose of acquisition of said 10 marlas of indented land which indent at no point of time was ever recalled by the authority placing the same for the Collector Land

Acquisition (ACR) Budgam to initiate the land acquisition exercise.

20. Thus, by issuance of mandatory injunction, all the defendants were in fact stood mandated to perform the statutory duty which otherwise was binding upon them at all points of time.

21. The contesting respondent in order to earn fruit of decree sought execution of the mandatory injunction decree and approached the executing court which has come up with the direction to the Treasury Officer, Chadoora not to honor any bill presented on Treasury by the Executive Engineer, PHE Division Chadoora, till further orders from the executing court.

22. This order has left only the Executive Engineer, PHE Chadoora, Budgam being concerned to come up with the present petition under Article 227 of the Constitution of India, averments of which, when read between the lines, literally undermine the very exercise which was self-initiated by the Government, through the concerned Department, for the purpose of acquisition of the land in reference.

23. Thus, this Court finds no illegality on the part of the executing court in issuing direction unto the Treasury Officer, Chadoora in the given context of the case.

24. Mr. Jahingeer Ahmad Dar, learned Government Advocate, refers to the annexures accompanying the present petition to show that an exercise is afoot for payment of compensation but there is an issue with respect to actual measurement of land having come under appropriation as against the land for which Section 4 notification in terms of Acquisition Act was issued.

25. The annexures accompanying the petition do not provide any scope for the executing court to relax the guard for the comfort of the judgment-debtors and take the execution of a decree at their own leisure and pleasure.

26. In the case, the petitioner herein-Executive Engineer, PHE Division Chadoora, is so concerned, then the amount of Rs. 10,39,500/- as assessed for compensation of 10 marlas of land ought to have been deposited first with the executing court with a request not to disburse the same till the settlement of the

measurement of the land actually appropriated as against the indented acquisition.

27. The very fact that the Commissioner/Secretary to Government PHE, I&FC Department; the Chief Engineer PHE Department, Srinagar; and the Collector Land Acquisition, ACR Budgam who are equally judgment-debtors, are least bothered with the execution proceedings and effects thereof, the petitioner-Executive Engineer, PHE Division Chadoora, Budgam is also to stay bound to the fact that the said three authorities are reconciling with the directions of the learned executing court. The petitioner-Executive Engineer, PHE Division Chadoora, is overreaching the authority to undermine a judicial process by referring filing of the present petition as being on behalf of UT of J&K, when UT of J&K or for that matter its predecessor of State of J&K was never a party to the civil suit.

28. As such the present petition is held to be misconceived and is **dismissed**. However, it is made clear that in case the deposit of Rs. 10,39,500/- is volunteered and made by the judgment debtors with the executing court then the attached account head be released by the executing court. In the event of deposit

of Rs. 10,39,500/- with the executing court, then said amount be released to the decree holder by first taking an undertaking in writing duly notarised to the effect that the amount received is full and final discharge of his claim whatsoever against the judgment debtors and also that in case any share holder shall stake a claim for a share in the compensation so received by him before the executing court or before the judgment debtors then the decree holder shall be bound to return the amount of share as may be held to be payable to such a shareholder claimant.

29. Copy of this order be forwarded by the Registrar Judicial Srinagar to the Court of learned Sub-Judge (CJM), Budgam for notice and record.

(RAHUL BHARTI)
JUDGE

SRINAGAR:
30.01.2026
Shabroz