

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

Reserved on: 10.09.2026

Pronounced on: 18.09.2026

Uploaded on: 19.09.2026

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

OWP No.779/2006

QAWAM-UD-DIN SHAH & ORS.

...PETITIONER(S)/ APPELLANT(S)

Through: - Mr. Molvi Ajaz Ahmad, Advocate.

Vs.

STATE OF J&K & ORS.

...RESPONDENT(S)

*Through: - Ms. Rahella Khan, Assisting Counsel, vice
Mr. Mohsin Qadiri, Sr. AAG.*

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) Before advertng to the main writ petition, it is deemed proper to observe that during pendency of this petition, the petitioner No.7, Zahoor-ud-Din Shah, came to demise and his LR's, namely, Nissar Ahmad, Gazi Ahmad, Zulufkar Ahmad and Parvaiz Ahmad, were brought on record. However, as they didn't choose to appear, the writ petition was dismissed qua legal heirs of petitioner No.7. Consequently, this petition survives only regarding petitioner Nos.1 to 6, as is evident from order dated 11.09.2026 and henceforth the petitioners shall refer to petitioner Nos.1 to 6 only.

2) The petitioners have filed this petition for grant of following reliefs:

- I) By issuance of a writ of certiorari or any other appropriate writ, order or direction, the impugned notification dated 12-01-1989, order dated 25-09-1989 issued by respondent no.3 and the notice dated 05-09-2006 issued by respondent no.6 be quashed.
- II) By issuance of a writ of mandamus or any other appropriate writ, order or direction, respondents be directed not cause any interference with the possession of the petitioners over land measuring 4 kanals 7 marlas bearing survey No.13 and Khasra No.133 situate at village Yar tehsil Pulwama and land measuring 4 Kanals 03 marlas comprising of survey Nos.82/1, 388/1, 391/1 & Khasra No.191 (0.13 marlas) and survey Nos.388, 391, 156 and 266 & Khasra No.192 (3 Kanals 10 marlas) situate at village Drubagam, tehsil Pulwama, or dispossess them there from in any manner whatsoever.

3) It is stated that on the death of Habibullah Shah alias Haba Shah, his property came to be mutated in the name of his son Jalal-ud-Din Shah vide mutation No.237 dated 13th Magh, 1997. As Jalal-ud-Din Shah was minor, therefore, he was represented by his uncle Mubarak Shah.

4) It is stated that Jalaluddin Shah lived at Drubgam, Tehsil Pulwama, for quite some time and thereafter disappeared in the year 1942. His relatives, including some of the petitioners, did their best to find out his whereabouts, but could not succeed. Accordingly, it was presumed by them that he might have met with some kind of mishap and died. After the disappearance of Jalaluddin Shah, who, as per the petitioners, was issueless, all his holdings came into the

hands of his uncles i.e. the predecessors-in-interest of the petitioners, and they continued to enjoy the property without any interference from any quarter from the year 1942 onwards. It was only in the month of May, 2006 that the petitioners received a summon from respondent No.6 for causing their appearance before him on 09.05.2005. They accordingly appeared before him, where they came to know that somewhere in the year 1989, respondent No.7 had filed an application before respondent No.3 for allotment of land measuring 04 kanals and 07 marlas comprising Survey Nos.13 and 133, situated at Village Yar, Tehsil Pulwama, and land measuring 04 kanals and 03 marlas comprising Survey Nos.82/1, 388/1 and 391/1 and 191 (0.13 marlas) and Survey Nos.388, 391, 156, 266 and 192 (03 kanals 10 marlas) situated at Village Drubgam, Tehsil Pulwama. It is stated that the said land was declared as evacuee property by the Custodian Department in terms of notification dated 12.01.1989 at the back of the petitioners and without any notice to them. The petitioners also came to know that respondent No.3, at their back, had passed an order dated 25.09.1989, whereby the aforesaid land was allotted in favour of respondent No. 7 under Section 9 of the J&K State Evacuees (Administration of Property) Act, 2006 (for short "the Act of 2006") as the respondent No.7 had allegedly

obtained a power of attorney from Jalaluddin Shah in the year 1988 for managing his property. The respondent No.3 also directed Tehsildar to resume possession of the said property from the unauthorized occupants i.e. the petitioners and to deliver the same to respondent No.7.

5) The petitioners, being aggrieved of the notification dated 12.01.1989 and the order dated 25.09.1989, have impugned the same on the following grounds.

- (I) That the petitioners and their predecessors-in-interest and other relatives of Jalaluddin Shah tried their best to find out his whereabouts, but could not succeed and, as such, believing that Jalaluddin Shah was dead, they continued to enjoy possession of the property as if the same had been inherited by them. Respondent No. 7, in fact, on the basis of a manipulated power of attorney, got a notification issued by the Custodian Department on 12.01.1989 and thereafter, at the back of the petitioners, filed an application before respondent No. 3 for allotment of the evacuee land. Thereafter, respondent No. 3, without issuing any summons to the petitioners or their predecessors-in-interest, passed the order dated 25.09.1989. The respondent No. 3 before passing the

order dated 25.09.1989 did not even bother to examine as to whether the particulars of the respondents mentioned in the application were correct and sufficient and whether the persons who were in possession of the so-called evacuee land had been made parties to the proceedings or not. Precisely, the contention of the petitioners is that the order dated 25.09.1989 was passed at their back and that the notification dated 12.01.1989 is an outcome of fraud and manipulation.

(II) That once Jalaluddin Shah had gone to Lahore in the year 1942 and had been living there, he cannot be declared as an “evacuee” within the provisions of the Act of 2006 and, consequently, his property could not have been declared as “evacuee property”. Therefore, the Custodian Department had no jurisdiction to issue the notification dated 12.01.1989.

(III) That the petitioners are in possession of the property declared as evacuee property by respondent No. 3 in terms of the notification dated 12.01.1989, before the year 1942 and thereafter, as such, before issuing the notification dated 12.01.1989, respondent No.3 was

required to afford an opportunity of hearing to the petitioners.

6) Respondent Nos.2, 3 and 4 have filed their response, stating therein that the petitioners have not explained as to why they did not challenge the notification dated 12.01.1989 and order dated 25.09.1989 for nearly two decades, as such, the present petition deserves to be dismissed. It is stated that the petitioners have projected wrong facts and made bald assertions in the writ petition. It is contended that the property in question was kept hidden by the petitioners, who had illegally occupied the property of their uncle/co-sharer and did not declare the same to the authorities. They are, in fact, blowing hot and cold by stating that respondent No.7 was missing since 1942, while they themselves did not make any such declaration to the authorities. Besides, Jalaluddin Shah continued to be recorded as the owner throughout, which belies the contention of the petitioners. It is further averred that the evacuee/recorded owner, Syed Jalaluddin Shah, presented himself before the Custodian during the year 1988 when he visited Kashmir and the property was discovered as an evacuee property during judicial proceedings held by the Custodian, and was accordingly declared as “evacuee property” and it was done after providing an

opportunity to all concerned to project their cases. It is stated that the passport and the Visa of the evacuee were checked in open Court and it was established that he was the real owner of the property, who was under disability to possess the property personally and was entitled to protection under the Act of 2006. His statement was recorded and he wanted that his property to be protected from illegal encroachment. Thereafter, during the course of inquiry, it was established that the property had been illegally grabbed by the petitioners and the orders for their eviction were issued.

7) Respondent No.7 has also filed a counter-affidavit, stating therein that the writ petition has been filed in the year 2006 by a group of persons usurping the evacuee property unauthorisedly. The land was declared as 'evacuee property' by the competent authority and the petitioners are required to surrender possession thereof in favour of the answering respondent. In fact, they negotiated the matter and arrived at a settlement before the Deputy Custodian. Now they are challenging the Notification dated 12.01.1989 and the order issued in pursuance thereof dated 25.09.1989, without tendering any explanation with regard to the delay and laches.

8) It is contended that the petitioners, in fact, have no locus and no cause to prefer the present writ petition. The property

having been notified as evacuee property cannot be de-notified under the provisions of the Act of 2006. In fact, the petitioners have a remedy provided under the relevant statute to redress their grievances, if any, and writ jurisdiction cannot be invoked. It is further stated it was the legal duty of the petitioners to inform the authorities about the evacuee property, but they concealed the said fact from the authorities under the Act.

9) The respondent No. 7, besides narrating the factual aspects as pleaded by respondent Nos. 2, 3 and 4 in their response, has also stated that during the pendency of the writ petition, the petitioners filed MP No.1 of 2016, informing the Court about the death of the owner of the property in question, namely, Syed Jalaluddin Shah, and produced the death certificate issued in the year 2010. It is also the stand of respondent No.7 that the petitioners have admitted that the land which is the subject matter of the dispute is recorded in the name of Jalaluddin Shah in terms of Mutation No. 237. It is also averred that the Custodian, Evacuee Property, appointed respondent No. 7 as an allottee of the land and a perusal of the order would show that the non-applicants were summoned, but they chose not to appear before the authority. Subsequently, they were also summoned through a notice

published in the daily newspaper “Aftab” on 10.06.1989, but they still failed to appear, whereafter exparte proceedings were undertaken. Thereafter, witnesses were examined and documents were taken on record, including the visa and passport of the original owner/evacuee. On the basis of the inquiry conducted and completed by the Custodian, the order of allotment was made in his favour and the Deputy Custodian was directed to initiate proceedings against the unauthorized occupants. The Assistant Custodian, thereafter, issued various summons to the petitioners to appear before him and one of the occupants, namely, Latif Ahmed and Syed Maqbool Ahmed, presented themselves before the authority and sought time for entering into a family settlement/compromise. They were granted time to come up with their stand on 28.08.2006 and further time was also granted to all the parties to come up with the compromise on 16.09.2018, failing which the possession of the property was to be taken over in the presence of the respectable persons of the village, including the Numberdar and Chowkidar. However, the petitioners having failed to show as to what is the basis of their claim and relation to the land grabbed by them, they are not entitled to any relief.

10) Learned counsel for the petitioners, Mr. M. Aijaz, has argued that Jalaluddin Shah was not an evacuee, as such,

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respondent Nos.2 to 4 could not have passed the order dated 12.01.1989 declaring the property as an evacuee property. He further submits that once the property was not evacuee property, the same could not have been allotted in favour of respondent No. 7. He has further argued that the notification dated 12.01.1989 and also the order dated 25.09.1989 were issued at the back of the petitioners, without affording them due opportunity of hearing and, as such, the same cannot sustain in the eyes of law.

11) *Per contra*, Ms. Rahella Khan, learned counsel appearing for the respondents, submits that as per the own admission of the petitioners, the property was mutated in the name of Jalaluddin Shah, who happened to be a minor at the time of attestation of the mutation and was represented by his uncle, namely, Mubarak Shah, as his guardian, as such, neither Mubarak Shah nor anyone else can raise the plea of title or legal possession of the property in question. Therefore, the present writ petition deserves to be dismissed. She has further submitted that despite opportunities having been afforded, the non-applicants, as mentioned in the order dated 25.09.1989, did not appear before the Custodian, Evacuee Property, and, accordingly, the order impugned came to be passed.

12) Heard learned and perused the record.

13) In paragraph 3 of the writ petition, it is admitted by the petitioners that on the death of Habibullah Shah, his property was mutated in the name of Jalaluddin Shah vide Mutation No.237 dated 13th Magh, 1997 by the competent authority and at the time of attestation of the mutation, Jalaluddin Shah, being a minor, was represented by his uncle, namely, Mubarak Shah. The petitioners before this Court claim to be the relatives of Jalaluddin Shah but the fact remains that they have no right or title in the property mutated in the name of Jalaluddin Shah. Even Mubarak Shah or his successors cannot claim any right in the property owned by Jalaluddin Shah, as Mubarak Shah had represented the minor and had been reflected as his guardian in the mutation. A guardian is legally prohibited from raising any plea that conflicts with the welfare and interests of the minor.

14) The petitioners have impugned the order dated 25.09.1989, primarily, on the ground that as Jalaluddin Shah had disappeared in the year 1942, therefore, his property could not have been declared as an evacuee property. Section 2(c)(ii) of the Act of 2006 provides complete answer to the contention raised by the petitioners and the property of Jalaluddin Shah falls within the definition of “evacuee property”.

15) Otherwise also, the petitioners cannot have any locus to dispute the declaration of the property as evacuee property. The locus, if any, vested with Jalaluddin Shah but it was at the instance of Jalaluddin Shah himself only, who appeared before the Custodian, Evacuee Property, Srinagar, on 13.12.1988, and the Custodian, Evacuee Property, came to know about the undisclosed evacuee property of Syed Jalaluddin Shah. Accordingly, in terms of order dated 13.12.1988, the Assistant Custodian, Pulwama, was requested to furnish the necessary record regarding the landed property of Jalaluddin Shah situated at villages Drubgam and Yar, Tehsil Pulwama. Earlier, on 12.02.1988, Respondent No.7 applied to the Deputy Custodian, asserting that Jalaluddin Shah had migrated as an evacuee, leaving behind property in Pulwama. Expressing interest as a close relative, respondent No.7 urged the Custodian Department to secure the subject property.

16) The record further reveals that a report dated 28.04.1988 was submitted, and it was found that the property in question was recorded in the name of Jalaluddin Shah, migrant and, accordingly, the Custodian was requested to declare the said property as evacuee property.

17) As already noticed above, in terms of order dated 13.12.1988, the Assistant Custodian, Pulwama, was

requested by the Custodian Department to furnish the necessary revenue records pertaining to the property of Jalaluddin Shah. After the necessary records were furnished, the statements of Jalaluddin Shah and other witnesses, including father-in-law of respondent No.7, were recorded. After conducting the inquiry, in terms of sub-section (1) of Section 6 of the Act of 2006, the land in question was declared as "evacuee property". Thereafter, in terms of order dated 04.02.1989, the Deputy Custodian, Evacuee Property, Kashmir, directed the Assistant Custodian, Pulwama, to implement the notification in respect of declaration of the property in question as evacuee property in the revenue records. It was further directed that, after doing the needful, the unauthorized occupants be served with notice demanding surrender of possession of the evacuee property in favour of the Department. The unauthorized occupants were also to be informed that one Mohammad Hussain Shah son-in-law of Peer Mubarak Shah, has made an application for allotment of the said evacuee property before the Custodian, fixed for hearing on 16.02.1989, and that if they intended to file any objection in the matter, they can personally or through their legal representative present the same before the Custodian, Evacuee Property, Kashmir.

18) Thus, it is evident that the property was declared to be evacuee property in accordance with the provisions of law and, therefore, the petitioners cannot raise any objection with regard to issuance of the notification dated 12.01.1989. The petitioners, in fact, have no locus at all to assail the notification dated 12.01.1989. The locus, if any, vested only with Jalaluddin Shah to object to the declaration of the property as evacuee property. However, it was at his instance that the property in question came to be declared as evacuee property.

19) It was next contended that before passing the impugned order dated 25.09.1989, no opportunity was afforded to the petitioners. The record, however, depicts that repeated summons was issued to the predecessors-in-interest of the petitioners and petitioner No.7. Even do-parta summons was also issued and Notice was also published in daily newspaper "Aftab" on 10.06.1989 and when even after publication of the notice, none appeared before the authority, the impugned order dated 25.09.1989 came to be passed.

20) The petitioners have no independent right to remain in occupation of the evacuee property and, once they have no locus to assail the notification dated 12.01.1989 regarding declaration of the property as evacuee property, they cannot

be permitted to remain in possession of the evacuee property in absence of any authorization from the Custodian Department.

21) In view of the above, this Court is of the considered view that the present petition lacks merit and is, accordingly, dismissed. However, this Court is sanguine that respondent Nos.2, 3 and 4 shall proceed strictly in accordance with the provisions of the Jammu and Kashmir State Evacuees (Administration of Property) Act while dealing with the “evacuee property” in question.

22) The record be returned to learned counsel for the respondents.

(Rajnish Oswal)
Judge

Srinagar,
18.09.2026

“Bhat Altaf-Secretary”

Whether the judgment is reportable: **NO**