

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

WP(C) 697/2026 CM (1767/2026)

- 1. Poshkar Nath Dhar S/o. Late Shri Tara Chand Dhar**
- 2. Jawhar Lal Dhar S/o. Late Ved Lal Dhar**
- 3. Ramesh Kumar Dhar S/o. Late Brij Lal Dhar**
- 4. Hiday Nath Dhar S/o. Late Ved Lal Dhar**
- 5. Vijay Dhar Widow of. Tej Krishan Dhar**

**All residents of Village Danow (Bogund) Kulgam
A/P 104, Sector 5, Roop Nagar Jammu**

...Petitioners.

Through: Mr. Jahangir Ahmad Ganai, Sr. Advocate with
Ms. Gousia Tabasum, Advocate

Vs.

- 1. Union of India Th. Secretary, Ministry of Home Affairs,
North Block New Delhi, 110001**
- 2. Secretary to Government Jammu & Kashmir
Revenue Department, Civil Secretariat, Srinagar/Jammu**
- 3. Defence Estate Officer, Srinagar Circle, Govt of India
Ministry of Defence, Shivpora, Batwara, Badami Bagh Cantt. Sgr**
- 4. 1 RR (MAHAR) Pin 934501 C/o. 56 APO**
- 5. Deputy Commissioner, Kulgam**

...Respondents.

Through: Mr. T.M. Shamsi, DSGI for R1 & 4
Mr. Faizan Ahmad Ganai, CGC for R3.
Mr. Allauddin Ganai, AAG for R2 & 5.

CORAM:

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

ORDER

14.09.2026

1. Heard the preliminary submissions of the learned counsel for the parties in respect of the matter.
2. Shorn of unnecessary details, the case of the petitioners is that they are the owners in de jure possession of a plot of land measuring 6 kanals and 10 marlas, falling under Khasra numbers 37 and 39, situated at village Wazirpura, Tehsil Qaimoh, District Kulgam, [hereinafter referred to as the

'subject land' for short]. That being a Class First Aabi-Awal irrigated land, the same used to be continuously put by them for agricultural purposes on double crop basis. That unfortunately with the emergence of militancy in the Valley of Kashmir in 1989, resulting in turbulent and disturbed conditions, they were forced to migrate to Jammu under helpless conditions. That the subject land at their back and without their consent came to be occupied by the security forces belonging to 1st RR [MAHAR]. That upon learning about the unauthorized occupation and use of the subject property by the respondent No. 4, they submitted a representation to the concerned authorities with the request for paying appropriate rent to them.

That despite their representation revealing the subject land as Class 1st irrigated Aabi Awal land, yielding double crop, the respondent No. 3 unilaterally fixed the rent of the same on single crop basis criteria. That upon agitation of their genuine grievances, the respondent No. 3 took up the matter with the respondent No 5, requesting the latter to look into the matter regarding their entitlement to the rent on double crop basis, which is evidenced from the communication dated 1st September 2021 issued by the respondent No. 3 to the respondent No. 5, forming Annexure-I to their petition. That in response to the communication aforesaid, the respondent No. 5 sought the report from the Tehsildar concerned, who reported that there is no objection in treating the subject land as double crop land on the basis of the nature of the same and especially the use the same was being put to by them (petitioners). That the Tehsildar concerned submitted his report dated 17/12/2021 to the respondent No 5, and the latter in turn got

the said report communicated to the respondent No. 3 under No. DCK/ACR/2021-22/1002, dated 18/12/2021, from his office, forming Annexure-II to their petition.

That the respondent No. 3 accordingly communicated to the respondent No. 4 under number JKS/408/HRG/RR/1 dated 5th January, 2022 on the subject, with the request for convening Board of Officers for analyzing/finalizing rentals as per double crop in respect of the subject land, forming Annexure-III to their petition. That, however, despite verifying the fact of the subject land being an Aabi-Awal irrigated double crop land, the respondents have slept over the matter and used to pay the rentals to them on single crop basis. That even the rentals on single crop basis have been last paid to them as per the payment order dated 25/4/2025. That they are being put to continuous loss by not paying rentals to them on double crop basis.

That although the Government of Jammu & Kashmir through Revenue Department, (Respondent No. 2), vide Order No. 10-JK, (Rev) of 2014 dated 23-01-2024, has ordered the revision of rates of rent for the properties occupied by Defence Forces in UT of Jammu and Kashmir for the period w.e.f. 16-2-2018 to 15-2-2023, yet they received the rentals for the said period, on single crop basis. That they have received rent for some period @ of Rs. 5578/- per kanal, when they were entitled to receive the same at the enhanced rate of Rs. 8499/- per kanal per annum. That the respondents 3 and 4, despite undoubtedly admitting that the subject land is in their possession, did not bother to process and to pay the rent as per the government order aforementioned to them.

That the only legal course open to the respondent was to either resort to the provisions of Requisitioning and Acquisition of Immovable Property Act, or in the alternative to pay them the rent, if not on the prevailing market rate, yet on the rate fixed by the Government of Jammu & Kashmir from time to time, treating the land as Class 1st irrigated Abi-Awal double crop land. That the failure of the respondents to choose among the two legal alternatives justifies their (Petitioners) claim for eviction of the respondent no. 4 from their land, so that they are not put to further continuing loss.

That the right against the deprivation of property, unless in accordance with the procedure established under law, continues to be a constitutional right under Article 300A of the Constitution of India. The cardinal principle flowing from the right guaranteed under Article 300A of the Constitution of India is that nobody can be deprived of the property without due course of law. That they are not in a position to use the subject property as per their wish in view of the unauthorized occupation of the same by the security forces.

3. The petitioners have accordingly sought for issuance of writ/direction in the nature of mandamus for directing the respondents to forthwith evict and hand over the peaceful possession of the subject land measuring 06 kanals and 10 marlas falling under Khasra numbers 37 and 39, situated at revenue estate Wazirpora, Tehsil Qaimoh, District Kulgam, to them, **OR** in the alternative to pay them rent, including arrears for use and occupation of the said land as per the rates fixed by the government for the land in the nature of irrigated double cropped.

They have also sought the payment of compensation to them for damages and loss caused to them on account of the unauthorized and unlawful occupation of the subject land.

4. The learned counsel for the petitioners, while briefing the stand taken in detail in the memo of petition, submitted that the constitutional right of the petitioners guaranteed to them under Article 300A of the Constitution of India, which is not to be considered in isolation but in juxtaposition with the other related fundamental rights guaranteed to them under Articles 14 and 21, stands deprived to them on account of the inaction of the respondents in either paying them the due rent under rules to which they are entitled, or in the alternative taking immediate steps for requisition and acquisition of the same under law, or in vacating the same after payment of all the arrears of rent due to them till the date of vacation.

5. He further submitted that the petitioners are not in a position to use the property as they wish to in view of the unauthorized occupation of the same by the Security Forces. That the right to property is not only a constitutional but also a human right, which within its realm would include the petitioner's right to use and enjoy the property. That the respondents, in law, cannot be allowed to deny them their vested right of use and enjoyment of their property. That the petitioners intend to use and enjoy the property but are not in a position to do so due to the occupation of the same by the security forces. That as the occupation and the use of the property by the security forces is without any authorization of law, the respondents by an appropriate writ are required to be directed to

immediately vacate the property and handover the peaceful possession of the property to them.

6. The learned counsel, in support of his arguments, placed reliance on the law laid down by the Hon'ble Supreme Court of India in "*Vidya Devi versus State of Himachal Pradesh and others*, (2020) 2 SCC 569". It is profitable to reproduce the relevant paras of the judgment relied upon by the learned counsel for the sake of convenience.

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

12.3 To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right as also the constitutional right under Article 300A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corpn. Ltd. V. Darius Shapur Chenai, wherein this Court held that:

“6.... Having regard to the provisions contained in Article 300A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.”

12.6 In *Jilubhai Nanbhai Khachar v. State of Gujarat*, this Court held as follows:

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

7. Mr. Faizan Ahmad Ganai, Id. CGC who appeared for respondent No. 3 submitted that the petitioner's claim for enhanced rent available to double-crop irrigated land is not justified under law, as the Field Agency has not reported that the subject land was put to the double-crop cultivation. They submitted that the Govt of Jammu & Kashmir has been periodically reviewing the rent rates in respect of the private lands occupied for the accommodation of the defence forces and petitioners are being paid rent duly as per the criteria in vogue. They submitted that the petition is not maintainable for want of cause of action.

8. Learned DSGI, Mr. T. M. Shamsi, submitted that the reply already filed on 10.9.2026 may be treated on behalf of respondents 1 and 4 only. The Id. AAG representing the respondents 2 and 5, however, submitted that the communications made by the respondent No. 3 to the office of the respondent No. 5 have been duly replied on the basis of the factual field reports.

9. I have gone through the memo of the petition filed by the petitioners as also the reply/objections filed by the respondents 1 & 4. The preliminary submissions made by the learned counsel for the parties have also been considered.

10. The court, in the facts and circumstances of the case, is of the considered opinion that it may meet the ends of justice in case the instant petition is disposed of at this threshold stage by passing of appropriate directions, which are not likely to prejudice the interests of any of the parties, but which are rather meant to be complied with by the respondents out of their statutory obligation.

11. It is undisputed that the subject land is in the occupation of the security forces belonging to 1st RR, (MAHAR). It is also undisputed that petitioners have been paid the rentals on account of the forcible occupation of the subject land on single crop basis criteria.

12. The office of the Deputy Commissioner, Kulgam, that is respondent No. 5, has, in response to the communications of the respondent No. 3, i.e. Defence Estates Officer, Kashmir, Srinagar, reported that the subject land measuring 06 kanals and 10 marlas is recorded as Aabi Awal belonging to migrants/petitioners, and is in possession/occupation of security forces, with effect from which occupation no farming activity has taken place on the same. It has also been reported that in the adjacent irrigated fields mustard is sown as Rabi crop and paddy as Kharif crop, and the same crops would grow on the land in question. The office of the Deputy Commissioner has further reported in the communication dated 18-12-2021, also referred to herein before, that there seems to be no objection if the land in question is treated as double crop land.

13. The court has gone through all the communications that came to be made between the offices of the respondent Nos. 3 and 5 in respect of the subject matter.

14. The Government of Jammu & Kashmir (Revenue Department) vide Government Order No. 10-JK(Rcv) of 2024 dated 23-01-2024, has issued revised rates of rent for the properties occupied by Defence Forces in the Union Territory of Jammu & Kashmir, as per which the irrigated double cropped land is to be paid rent at the rate of Rs. 8429/- per kanal per annum with effect from 16-02-2018.

15. When the subject land is admitted by the respondents to have been in occupation of security forces, how is it possible that same could have been put to agricultural use on double crop basis? The communication of the office of respondent No. 5 dated 18-12-2021 made to the respondent No. 3 clearly and unequivocally reveals that the land adjacent to the subject land yields double crop 'Rabi and Kharif', and same crops can also be grown on the subject land. The respondent no. 3, i.e. Defence Estate Officer, Kashmir Circle, Srinagar, vide his communication dated 5th January, 2022 has taken up the matter with the respondent No. 4, that is, the occupying wing of the security forces on the subject of payment of enhanced rent on double crop basis in respect of the subject land, but there has been no response on their part to the prejudice and continuing loss of the petitioners. The petitioners, who have already suffered on account of their forcible migration from the Valley with the onslaught of militancy, have been put to further loss on account of the forcible occupation of the subject land without either acquiring the same under law or paying them

the rent, if not on prevailing market rates, yet on rates in vogue prescribed by the government or in the alternative vacating the same.

16. For the foregoing discussion, instant petition is disposed of with the direction to the respondents to either: -

- I. forthwith vacate the subject land measuring 06 Kanals and 10 Marlas, falling under Survey Nos. 37 and 39, situated at revenue estate Wazirpura, District Kulgam, Kashmir, and to hand over the vacant possession thereof to the petitioners, after payment of the arrears of the rent on irrigated, Abi-Awal, double crop land basis, up to the date of handing over of the same.

OR

- II. Acquire the same under law by having recourse to the provisions of Requisitioning and Acquisition of the Immovable Property Act, after payment of due compensation to them.

OR

- III. In the alternative, to pay the petitioners rent, including outstanding arrears for use and occupation of the said land, by treating the same as Class First irrigated double cropped land, with effect from the date of occupation of the same, as per the criteria/norms which were in vogue from time to time in pursuance of the Government Orders.

The respondents shall take a decision in this behalf within a period of three months from the date copies of this order/judgment are left at their offices.

17. **Disposed of.**

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR
14.09.2026
Shahid Manzoor