

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 968/2024

Reserved on: - 16.07.2026

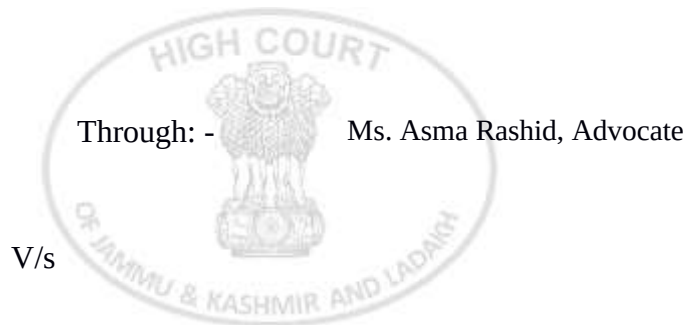
Pronounced on: - 27. 07. 2026

Uploaded on: - 27 .07.2026

Whether the operative part or full judgment is pronounced: - Full.

Mohammad Iqbal Wani and Ors.

.... Appellant(s)



UT of J&K and Ors.

Through: - Mr. F. N. Shah, GA for R1-8
Mr. Nisar Ahmad Bhat, Advocate for R9&14

CORAM:HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

01. By way of the present petition, the petitioners have challenged the order dated 30.04.2024, passed by respondent No. 2, whereby the appeal preferred by the petitioners came to be dismissed. The petitioners have also challenged the order dated 21.10.2023 passed by respondent No. 4, the District Magistrate (Deputy Commissioner), Anantnag, whereby, in exercise of powers under the

Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 (hereinafter referred to as "*the Act of 1997*"), the Tehsildar, Shahabad Bala, has been directed to evict the alleged unauthorized occupants from the land falling under Survey Nos. 2275 and 2278 of Estate Bagwanpora, Verinag, which is stated to be in the possession of the petitioners.

FACTUAL MATRIX

02. The present case has a chequered history, it is stated that the original owner of the subject land, namely Radha Krishen S/o Anand Ram, executed an agreement dated 25.09.1986, in favour of the petitioner Nos. 1 to 3 and the grandfather of the petitioner No. 4, in respect of land measuring 03 Kanals and 13 Marlas, falling under Survey Nos. 2275 and 2278. According to the petitioners, the said agreement was in the nature of a mortgage-cum-conditional sale, pursuant to which the predecessors of the petitioners were put in possession of the subject land, the possession has continued uninterrupted for more than three decades. After the demise of their respective predecessors, the petitioners claim to have succeeded to and continued in peaceful possession of the said property.

03. It is further averred that Radha Krishen had borrowed an amount of Rs. 3,60,000/- from the predecessors of the petitioners and, as security for the said loan, mortgaged the subject land with a stipulation that, in the event of his failure to repay the loan amount, ownership rights of the said property would stand transferred in favour of the mortgagee. The petitioners contend that Radha Krishen failed to discharge his liability under the agreement and,

consequently, they have acquired lawful ownership over the subject property and are entitled to protection of their possession and ownership rights in accordance with law.

04. It is further stated that, after the demise of Radha Krishen as well as the predecessors of the petitioners, the private respondents herein, filed a complaint before the competent authority, pursuant thereto, the Tehsildar, Shahabad Bala, submitted a report stating that the land falling under Survey Nos. 2275 and 2278 stood recorded in the name of Radha Krishen in the revenue records under Mutation Nos. 3405 and 3406, and that possession of the said land has already been recorded in the names of Radha Krishen and others in the Kharif 2014 revenue records.

05. On the basis of the aforesaid report, respondent No. 4 vide order dated 03.03.2016, concluded that the land situated at Estate Bagwanpora, Verinag, Tehsil Shahabad Bala, constituted a migrant property within the meaning of the provisions of the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997. Consequently, respondent No. 4 directed the Tehsildar, Shahabad Bala, to visit the spot for eviction of the alleged unauthorized occupants for removal of the encroachment over the land in question. Respondent No. 4 further directed the concerned authorities to take custody of the property on behalf of the District Magistrate, Anantnag, and to assess the usufructs derived from the property so as to initiate recovery proceedings in accordance with the provisions of the Act.

06. The order dated 03.03.2016, passed by the District Magistrate, Anantnag, came to be challenged by the petitioners by filing OWP No. 554/2016, titled *Mohammad Sadiq Wani and Others v. State of Jammu &*

Kashmir and Others. The said writ petition was disposed of by this Court vide order dated 06.05.2017. In terms of the said order, the petitioners have accepted the status of the land as a migrant property and admitted that they are owners in possession of the said land on the basis of the agreement only and in that view of the matter, the Court had directed the District Magistrate, Anantnag, to take a decision on merits within a period of 12 months. The Court had accordingly, declined all reliefs to the petitioners.

07. Pursuant to the judgment dated 06.05.2017 passed by this Court, respondent No. 4, the District Magistrate, Anantnag, called for a report from the concerned revenue authorities. Upon consideration of the said report and the material placed on record, respondent No. 4 passed the order dated 21.10.2023, the operative portion whereof reads as under:

“ In view of these circumstances, it has been ascertained that documents presented by the counsel for non-applicants are not having any relevance as per law.

Therefore, in exercise of powers vested under Section 4 and 5 of J&K Migrant Immoveable Property (Preservation Protection and Restraint on Distress Sales Act) 1997, it is hereby ordered that the Tehsildar Shahabad Bala will proceed on spot and evict the unauthorized occupation over the land falling under Survey Ns. 2275 and 2278 of estate Bagwanpora Verinag, besides take custody of the land on behalf of the District Magistrate. File shall be consigned to records after its due completion.”

08. The petitioners, being aggrieved of the order dated 21.10.2023 passed by the District Magistrate, Anantnag, challenged the same by filing WP(C) No. 2888/2023. The said writ petition came to be dismissed by this Court vide judgment and order dated 08.11.2023. The relevant extracts of paragraphs 8 and 9 of the said judgment are reproduced hereinbelow

“8. In the instant case, admittedly the petitioners have been heard by the District Magistrate before passing the impugned order and in fact the petitioners have produced their documents and written arguments before the District Magistrate which have been considered by the said authority. It is also not the case of the petitioners that the District Magistrate was not competent to pass the impugned order. Thus, the instant case does not fall

under the aforesaid exceptions. If at all the petitioners feel aggrieved of the order of District Magistrate on the ground that their plea has not been appreciated by the District Magistrate in its proper perspective, they can avail alternative remedy of appeal under Section 7 of the Act of 1997. Without exhausting the said remedy, the petitioners cannot invoke extra ordinary writ jurisdiction of this Court.

9. For the fore going reasons, the writ petition is held to be not maintainable and is accordingly dismissed, leaving it open to the petitioners to approach the appellate authority.”

09. The learned Financial Commissioner, Revenue-respondent No. 2, after hearing the parties, passed the impugned order dated 30.04.2024. Relevant paragraphs 12 to 14 of the said order are taken note of:-

“ 12. Thus, for the reasons mentioned herein above, the appeal being devoid of any merit is dismissed.

13. While disposing off this matter, one cannot refrain from observing that the appeal in hand has been drafted so casually that the Act of 1997 has been mentioned as 1977; parentage of respondent no. 1 and respondent no. 2 has been wrongly shown as son of Anand Ram Tikoo and son of Radha Krishan Tikoo respectively and had to be rectified by this Court; and repeatedly reference of respondent no. 4 is given in the memo of appeal as the District Magistrate but in the title of the appeal, the District Magistrate is arrayed as respondent no. 8.

14. All the records, of this Court as well as the sub-ordinate Courts are uploaded on RCCMS (<https://rccms.jk.gov.in/>.) for ease of reference in any future litigation.”

10. The petitioners have challenged the impugned orders dated 30.04.2024 and 21.10.2023, passed by respondent Nos. 2 and 4, respectively, inter alia, on the grounds that the father of respondent Nos. 9 to 12 had already executed an affidavit in favour of the predecessors of the petitioners, and, therefore, no complaint could have been maintained before the District Magistrate under the provisions of the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997. It is further contended that the respondent authorities have passed the impugned orders without taking into consideration the relevant documents and pleadings on record, including the decree dated 22.03.1988, passed by the then Assistant Collector, Agrarian, Verinag, the affidavit executed by Radha Krishen, and the

copies of the mutation, Jamabandi and Register of Mutation. It is also pleaded that the original owner, namely, Radha Krishen, had accepted a sale consideration of Rs.3,60,000/- from the father of petitioner Nos. 1 to 3 and had executed an agreement dated 25.09.1986 in respect of land measuring 03 Kanals and 13 Marlas falling under Survey Nos. 2275 and 2278. It is, therefore, contended that the provisions of the Act are not attracted to the facts of the present case, as the petitioners are not in unauthorized occupation/possession of the property in dispute.

11. *Per contra*, respondents 9 to 12 have stated that they are successors of the then owner and a migrant Radha Krishan Tikoo. They have disputed the claim of the petitioners herein, and have stated that the property is a migrant property protected under the Act of 1997. The agreement of 1986 is an unregistered and legally unenforceable document, incapable of transferring ownership or any legal interest of the immovable property in dispute. They further submit that Radha Krishen Tikoo alone was not competent to transfer the entire property without the consent of the other co- sharers. As per them, the revenue record continues to record the ownership in their favour through Mutation Nos. 3404 and 3405, as such the petitioners are merely unauthorized occupants liable to be evicted under the provisions of the Act.

Arguments of learned counsel for the parties:

12. Learned counsel for the petitioners, Ms. Asma Rashid, has completely relied upon the agreement which is in the nature of mortgage-cum-conditional sale, substantiating the claim of the petitioners for their occupation on the said property since 1986. She claims that the property in dispute is not a migrant

property, as such, is not amenable to the provisions of Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997. Learned counsel has also placed on record copy of the decree dated 22.03.1988 passed by the Court of Assistant Collector, Agrarian at Verinag passed in the suit for declaration with permanent injunction, wherein a decree of declaration for the land, measuring 03 Kanals 08 Marlas falling under Khasra Nos., 2275 and 2278 at village Verinag estate Dooru has been passed in favour of Sonuullah, father of the petitioners 1 to 3 and against Pandit Radha Krishen, father of respondents 9 to 12.

13. The petitioners have referred to and relied upon the Judgments delivered by this Court in case titled as ***Ghulam Qadir Teeli Vs. State of J&K and Ors., and Mushtaq Ahmad Pandit Vs. Additional Deputy Commissioner*** in support of their claim.

14. Learned counsel for respondents 1 to 8 Mr. Faheem Nisar, learned GA and Mr. Nissar Ahmad, learned advocate for respondents 9 and 14 have stated that the property in dispute is a migrant property in terms of Sections 3 and 4 of the Act of 1997. It is stated that Section 4 of the Act of 1997, clearly states that Magistrate becomes *custodia legis* of any property belonging to a migrant, and the same cannot be alienated without the permission of Revenue and Relief, Minister, and any alienation in violation of the same, or without such permission is null and void. They further state that in the earlier petition filed before this Court, viz. WP(C) No. 554/2016, titled Mohammed Sadiq Wani and others Vs. State of J&K decided on 06/05/2017, petitioners had admitted and accepted that the land in question is a migrant property, and they are owners solely based on an agreement.

15. Learned counsel for the respondents have further stated that the said agreement is a notarized document incapable of transferring ownership; it is not a registered document. Moreover, the revenue records continued to remain in favour of the migrant owners, as such no title has ever been passed to the petitioners. The petitioners, if at all are claiming rights under the agreement, they must seek relief before a competent civil Court and not under the writ jurisdiction in terms of Article 226 of the Constitution of India. District Magistrate as well as Financial Commissioner have concurrently held that the agreement dated 25.09.1986, does not create any valid title in favour of the petitioners, the property continues to be a migrant property and the status of the petitioners is only of an unauthorized occupant. As far as decree dated 22.03.1988 is concerned, the same has not been placed on record in any of the proceedings before this Court or before the authorities, i.e, District Magistrate or Financial Commissioner. Mr Nissar Ahmad, learned advocate further states that the order of Assistant Collector at Verinag is not legally valid for having been passed by the incompetent authority, as such, is void ab-initio.

16. The respondents have referred to and relied upon the Judgment (1993) 2 Supreme Court Cases 507 titled ***Chiranjilal Shrilal Goenka Vs. Jasjit Singh and Others, Ajudh Raj and Others Vs. Moti S/o Mussadi and Chandrabhai K. Bhoir and others. Vs. Krishna Arjun Bhoir and others.***

17. Heard Learned counsel for the parties, perused the record and considered the submissions made by the parties.

18. The petitioners herein, have based their claim with respect to the property of 03 Kanals and 13 Marlas of land falling under survey Nos. 2275

and 2278, at estate, Verinag, Tehsil, Shahbad Bala District Anantnag, exclusively on the basis of an agreement, which is in the nature of mortgage-cum-conditional sale dated 25.09.1986 and a decree passed by the Assistant Collector Agrarian Reforms, Verinag on 22.03.1988, which has neither been placed on record nor relied upon by the petitioners in any of the proceedings before this Court or before respondents 2 and 4 prior to this petition filed by the petitioners. The migrant status of the father of respondents 9 to 14 is not disputed. The contention of the petitioners that the land in dispute is in their possession since 1986 on the basis of an agreement and decree dated 22.03.1988, as such their possession over the land in question is permissive and authorized. On the contrary, learned counsel for the respondents' state that the Act of 1997 is a special legislation, as such, it will prevail over all other laws, petitioners herein, cannot claim possession over the land belonging to a migrant, except in accordance with the procedure prescribed in the Act of 1997. In order to settle the dispute, this Court has formulated these issues:-

1. Whether the land measuring 03 Kanals and 13 Marlas situated at Estate Bagwanpora, Verinag, Tehsil Shahabad Bala, falls within the ambit of provisions of Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997?
2. Whether an unregistered mortgage-cum -conditional sale agreement dated 25.09.1986, confers any enforceable legal right in favour of the petitioners?
3. Whether the decree dated 22.03.1988 passed by Assistant Collector Agrarian Reforms, Verinag is admissible in the eyes of law?

Issue No. 1. The object of the Act of 1997 is to preserve and protect the immovable properties of migrants from illegal occupation, distress sale, and encroachment. The District Magistrate is designated as the statutory authority to safeguard such properties and restore possession to the lawful owners. The jurisdiction of the District Magistrate is confined to determine whether the property is a migrant property and whether the person in possession is an authorized or unauthorized occupant. The relevant provisions contained in Sections 3 to 5 of the Act are reproduced hereinbelow for ready reference:

“ 3. Restriction on alienation of immovable property. —
Notwithstanding anything to the contrary contained in any other law for the time being in force—

(a) alienation of immovable property of a migrant by act of parties or a decree or order of a court or of a revenue officer except under such conditions as may be prescribed and with previous permission of Revenue and Relief Minister, or such officer as may be authorised by him in this behalf, is forbidden:

Provided that no such permission shall be necessary in case of a mortgage without possession of such immovable property in favour of an institution mentioned in section 4-A of the Jammu and Kashmir Alienation of Land Act, Samvat 1995 and transfer of the said immovable property in favour of Government of Jammu and Kashmir :

Provided further that the permission to alienate shall be deemed to have been granted, if an application seeking permission for alienation of such property is not decided by the prescribed authority within fifteen days from the date of receipt of such application:

Provided also that the enquiry for the purposes of the grant of permission by the prescribed authority shall be limited to the question of sale being not distress;

(b) any alienation of immovable property on or after the commencement of this Act, in contravention to the provisions thereof, shall be null and void and immovable property so alienated shall, after such enquiry as may be prescribed, vest in its owner ; and

(c) no document purporting to alienate such immovable property in contravention of the provisions of this section shall be admitted to registration.

4. Custody of immovable property. —(1) Within 30 days from the commencement of this Act, the District Magistrate shall take over the possession of immovable property, belonging to Migrants, falling within his territorial jurisdiction and shall, on the expiry of said period of 30 days, be deemed to have the custody of such immovable property.

(2) The District Magistrate shall take all such steps as may be necessary for preservation and protection of such property:

Provided that possession of such property shall not be handed over to one save with the express consent of the migrant in writing.

5. Eviction of unauthorized occupants.— If any unauthorized occupant of any migrant property refuses or fails on demand to surrender possession thereof to the competent authority, such authority may use such force as is necessary for taking possession of such property and may for this purpose after giving reasonable warning and facility to any women not appearing in public to withdraw, remove or break open any lock, bolt or any door or do any other act necessary for the said purpose.”

Section 3 of the Act of 1997, prohibits alienation of immovable property of a migrant not only by act of parties, but also by a decree or order of a Court or a revenue officer without permission of revenue and relief Minister. It further provides that any alienation of immovable property in contravention of the Act shall be null and void.

Section 4 of the Act of 1997 provides that the District Magistrate becomes *custodia legis* of any property belonging to a migrant, and the same cannot be alienated without the permission of revenue and relief, Minister. Any action in violation of the same or without such permission is null and void.

Section 5 of the Act of 1997, authorized competent authority to evict an unauthorized occupant from a migrant property by use of force as may

be necessary for taking possession of the property. If the unauthorized occupant refuses to surrender the position.

19. The Rules have also been framed by the Government in exercise of its powers under Section 14 of the Act of 1997, which prescribe the manner in which an application for grant of permission to alienate the property has to be dealt with under these rules. It is further provided that, where any property has been transferred in contravention of the provisions of the Act, the District Magistrate having jurisdiction may, *suo motu* or on the basis of information received or otherwise, conduct an enquiry either himself or through a Revenue Officer not below the rank of Tehsildar. If, upon such enquiry, the District Magistrate is satisfied that intervention is warranted, he may take possession of the property by evicting the person in possession thereof, in order to preserve and protect the property.

20. In this case, petitioners have already admitted in OWP No. 554/2016 titled, ***Mohammed Sadiq Wani and others Vs. State of JK and others*** decided on 06.06.2017 that the land in question is a migrant property and they are owners based on an agreement only. Sections 3 and 4 of the Act provides that the District Magistrate shall take over the possession of the immovable property belonging to the migrants, which shall be deemed to be in possession of the District Magistrate, irrespective of the nature of possession of any person, other than the migrant himself. The petitioners herein are admittedly, in possession of the immovable property belonging to a migrant rightly been held to be an illegal possession. Since respondent No. 4 is a *custodia legis* of the said land, as such, he was well within his domain to pass impugned order dated 21.10.2023 thereby directing, Tehsildar Shahbad Bala to proceed on spot and

remove the unauthorized occupation over the land under survey Nos. 2275 and 2278 of estate Bhagwanpora Verinag.

21. Financial Commissioner vide impugned order dated 30.04.2024 has recorded extract of *Jamabandi* 1966-67. Paragraph 8 of the order is reproduced as under:-

“ 8. It is seen from the extract of Jamabandi 1966-67 placed on record that the land measuring 2K 8M under Khasra No. 2275 and 1K 5M under Khasra no. 2278 is recorded under Khewat no. 367, Khata no. 1510 min in the self cultivation of owners Ram Chand, Prithvi Nath sons of Vesha Mali widow of Anand Ram ½ in equal shares and Radha Krishan (adopted son) Mst. Shobavati widow of Tara Chand, ½ in equal shares. In the Girdawari extract of Rabi 2014, and also in the current Girdawari, land under Khasra no. 2275 (2K 8M) is recorded in the self cultivation of Radha Krishan and Mst. Shobavati, “hissadaran” and land under Khasra no. 2278 (1K 5 M) in the self cultivation of Radha Krishan “hissadar”. Through mutation nos, 3404 and 3405, the inheritance of above said Radha Krishan and Mst. Shobavati has been devolved upon respondent 1 and 4 herein.”

22. Petitioners have also relied upon some mutation entries in their favour, the revenue records are maintained primarily for fiscal purposes, they do not create or confer any title in respect of the property.

It is no more res-integra that revenue entries do not create or extinguish any right or title over the property in dispute the title whereof has to be determined on the basis of substantive legal rights and valid transfer documents. The revenue entries, if any, do not conclusively determine title in favour of the petitioners. As such, the impugned orders dated 30.04.2024 and 21.10.2023, the admission and acceptance of the petitioners in Judgment/ order dated 06.05.2017, clearly substantiate that the property in dispute falls within the ambit of Act of 1997. Hence answered in favour of the respondents and against petitioners.

23. This view finds support in case titled *Manzoor Ahmad Mir and Anr. Vs. UT of J&K and Ors.*, 2021(5) JKJ 315, (HC), paragraph 25 of which holds:-

“25. In view of the aforesaid facts and circumstances, irrespective of the reasoning recorded by the writ court, the appellants who are admittedly in possession of the immovable property belonging to a migrant are rightly been held to be in illegal possession and since the District Magistrate, Baramulla, is custodia legis of the said land, he is well within his domain to direct the Tehsildar to take possession of the said land.

24. The High Court of J&K in case titled *Ghulam Rasool Bhat Vs. State of J&K and Ors.*, reported as 2021 (6) JKJ 188 (HC) has held as under:-

“ 11. From the perusal of aforesaid ratio laid down by the Division Bench it is clear that any alienation of immoveable property of a migrant without previous permission of Revenue and Relief Minister has to be treated as null and void. Admittedly, in the instance case no permission of Revenue and Relief Minister has either been sought or granted for alienation of the land which is subject matter of the petition. therefore, the documents on the basis of which petitioner is claiming possession and which have been admittedly executed after coming into force of the Act of 1997 are null and void. The petitioner, therefore, cannot claim any right including the right to possess the property in question on the basis of aforesaid documents which are not even registered.”

Issue No. 2. Petitioners have stated that they are in legal possession and ownership of the land in question on the basis of the agreement in the nature of mortgage cum conditional executed by Radha Krishen in favour of the father/grandfather of the petitioners. Respondent No. 4 in its order dated 21-10-2023 stated as under:-

“ The instant case was already disposed under Section 4 and 5 of J&K Migrant Immoveable (Property Preservation Protection and Restraint on Distress Sales Act) 1997, by this court under order bearing No. DCA/MC(279) 15/606-609 dated 03.03.2016 on the application presented by Vinod Kumar Tikoo S/o Late Radha Krishan R/o Verinag A/P migrant with the direction to Tehsildar concerned to proceed on spot and evict the unauthorized occupation over the land in question by removing any sort of encroachments over it, besides take its immediate custody on behalf of undersigned. Furthermore, usufructs for the period of un authorized occupation be calculated and furnish to this office for its recovery as provided under Section 13 of aforementioned Act.”

25. Financial Commissioner has also dealt with the said agreement at para 10 of the order dated 30.04.20 24.

“ The said document as rightly held by the District Magistrate is having no relevance under law. The said document not being a recognized mode of transfer has no legal sanctity and accordingly the appellants claiming their ownership on the basis of this un-registered document are not justified that too with regard to the migrant property, alienation of which requires a proper procedure to be followed as spelt out in the Act of 1997 and the rules made thereunder. The agreement upon which the appellants bank has nowhere been reflected in the revenue records, rightly so, and the suit land continues in the name of the respondents. ”

There are concurrent findings against agreement dated 25.09.1986 against the petitioners herein by respondents 2 and 4. The agreement dated 25.09.1986 is admittedly a notarized document and not a registered document. It has already been settled by Apex Court that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transfer of ownership of immovable property must be through a valid registered conveyance, where the law requires registration, an unregistered sale agreement cannot be relied upon to claim ownership. As per Section 138 of Jammu and Kashmir Transfer of Property Act, SVT 1977, no transfer of immovable property, except in the case governed by any special law to the contrary, shall be valid unless and until it is in writing and registered, the registration has been completed in accordance with Sub-Section (3) of Section 61 of Registration Act 1977. The said provision reads as under:

"No person shall take possession of, or commence to build or build on, any land in the Province of Kashmir which has been transferred or has been contracted to be transferred to him unless and until such transfer becomes valid under the provision of sub-section (1). ”

Therefore, the notarized agreement dated 25.09.1986, being an unregistered document, neither confers any legal right nor entitles the petitioners to claim the lawful possession of the subject property.

However, in case petitioners want to enforce the agreement then this is not the remedy available to the petitioners. This issue is also decided in favour of the respondents and against petitioners.

Issue No. 3. In this petition, the conduct of the litigant is not fair and is aimed at taking advantage by changing stands as per their own convenience. The decree passed by the Court of Assistant Collector Agrarian, Verinag dated 22.03.1988 was never being placed by the petitioners in any of the litigations before this Court or before respondents 2 and 4 prior to this petition. This has been made as annexure to the petition without referring much in the pleadings as to why the same was not placed on record or relied upon by the petitioners in the previous litigations.

The Apex Court has already deprecated the practice of taking inconsistent stance by litigants at different stages of same litigation in *Amar Singh versus union of India reported as 2011 AIR SCW 3297*.

“This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions.”

26. The decree dated 22.03.1988 was passed by the Assistant Collector Agrarian, Verinag in the suit for declaration and permanent injunction, which had been preferred by the father of the petitioners. Section 19 (e) and 28-A, of

J&K Agrarian Reforms Act, which now has been omitted but was applicable at the relevant point of time provided:-

“ 19(e) all other cases of dispute including those where the party in possession pleads adverse possession against the recorded owner/intermediary J.”

28-A Prohibition on transfer of certain lands.—(1) No person who is vested with ownership rights in land under this Act shall transfer such land or rights therein in any manner whatsoever to any person other than the Government of Jammu and Kashmir.

Provided that such owner shall have the right to transfer land in the form of simple mortgage subject to the provisions of the Alienation of Land Act, Samvat 1995 for securing loan for purposes of improvement of the land.

(2) Any transfer of land or rights therein made in contravention of sub -section (1) shall be null and void. The person who has contravened the provisions of sub-section (1) shall after being given an opportunity of being heard, be dispossessed of such land by a Revenue Officer not below the rank of Tehsildar and the land shall vest in the State and shall be disposed of in accordance with the provisions of Section 15.”

27. Section 19(e) which is applicable in this case states that Government by notification, determine the functions to be discharged or powers to be exercised under this Act by any class of Revenue Officers, with respect to all other cases of dispute, including those where the party in possession, plead adverse possession against the recorded owner/intermediary. However, Section 28-A states that no person who is vested with the ownership rights in land under this Act shall transfer such land or rights in any manner to any person, other than Government. Right to transfer of any land or rights therein made in contravention of sub-section 10 shall be null and void. There is nothing on record to show that petitioners’ agreement and the decree are valid in terms of the Agrarian Reforms Act 1976.

28. The Assistant Collector Agrarian has passed a decree in the suit for declaration with permanent injunction without any authority and jurisdiction.

He has exercised powers which were never conferred by the Act upon him, as such is *Coram non judice*. The said decree of injunction is a nullity in the eyes of law. The decree has been passed by a court which lacks inherent jurisdiction as such the decree is *void ab-initio*. The order has no legal existence, it can be ignored completely, does not require a formal challenge, suit, or a petition for it to be set aside.

29. The Supreme Court in case titled as *Chiranjilal Shrilal Goenka Vs. Jasjit Singh and Others* reported as 1993 (2) SCC 507, has held as under. Paragraphs 17 and 18 being relevant are taken note of:-

“17. We agree with Mr. Chidambaram that the applicant had consented to refer the dispute for arbitration of dispute in the pending probate proceedings, but consent cannot confer jurisdiction nor an estoppel against statute. The other legatees in the will were not parties to it. In A.R. Antulay VI R.S. Naik, [1988] 2 SCC 602 when a Constitution Bench directed the High Court Judge to try the offences under the [Prevention of Corruption Act](#) with which the petitioner therein was charged and the trial was being proceeded with, he 'questioned by way of writ petition the jurisdiction of this Court to give such a direction. A Bench of seven judges per majority construed meaning of the word 'jurisdiction', Mukerjee, J. as he then was, speaking per himself. Oza and Natarajan, JJ. held that the power to create or enlarge jurisdiction is legislative in character. So also the power to confer a right of appeal or to take away a right of appeal. The Parliament alone can do it, by law and not Court, whether interior or both combine, can enlarge the jurisdiction of a Court and divest a person of his rights of appeal or revision. Ranganath Misra, J. as he then was, held that jurisdiction comes solely from the law of the land and cannot be exercised otherwise. In this country, jurisdiction can be exercised only when provided for either in the Constitution or in the laws made by the Legislature. Jurisdiction is thus the authority or power of the Court to deal with a matter and make an order carrying binding force in the facts. Oza, J. supplementing the question held that the jurisdiction to try a case could only be conferred by law enacted by the legislature. The Supreme Court could not confer jurisdiction if it does not exist in law. Ray, J. held that the Court cannot confer a jurisdiction on itself which is not provided in the law. In the dissenting opinion Venkatachaliah, J., as he then was to lay down that the expression jurisdiction or prior determination is a "verbal coat of many colours". In the case of a Tribunal an error of law might become not merely an error in jurisdiction but might partake of the character of an error of jurisdiction. But, otherwise, jurisdiction is a 'legal shelter' and a power to bind despite a possible error in the decision. The existence of jurisdiction does not depend on the correctness of its exercise. The authority to decide embodies a privilege to bind despite error, a privilege which is inherent in and indispensable to every judicial function. The characteristic attribute of a judicial act is that it binds whether it be right or it be wrong. Thus this Court laid down as an authoritative proposition of law that the jurisdiction

could be conferred by statute and this Court cannot confer jurisdiction or an authority on a tribunal. In that case this Court held that Constitution Bench has no power to give direction contrary to [Criminal Law Amendment Act, 1952](#). The direction per majority was held to be void.

18. It is settled law that a decree passed by a court without jurisdiction on the subject matter or on the grounds on which the decree made which goes to the root to its jurisdiction of lacks inherent jurisdiction is a coram non judge. A decree passed by such a court is a nullity and is nonest. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the very authority of the court to pass decree which cannot be cured by consent or waiver of the party. In [Bahadur Singh v. Muni Subrat Dass & Anr.](#), an eviction petition was filed under the [Rent Control Act](#) on the ground of nuisance. The dispute was referred to arbitration. An award was made directing the tenant to run the workshop upto a specified time and thereafter to remove the machinery and to deliver vacant possession to the landlord. The award was signed by the arbitrators, the tenant and the landlord. It was filed in the court. A judgment and decree were passed in terms of the award. On expiry of the time and when the tenant did not remove the machinery nor delivered vacant possession, execution was levied under [Delhi and Ajmer Rent Control Act](#). It was held that a decree passed in contravention of [Delhi and Ajmer Rent Control Act](#) was void and the landlord could not execute the decree. The same view was reiterated in *Smt. Kaushalya Devi and Ors. v. KL. Bansal*. In *Ferozi Lal Jain v. Man Mal*, a compromise dehore grounds for eviction was arrived at between the parties under [section 13](#) of the Delhi and Ajmer Rent Control Act. A decree in terms thereof was passed. The possession was not delivered and execution was laid. It was held that the decree was nullity and, therefore, the tenant could not be evicted. In [Sushil Kumar Mehta v. Gobind Ram Bohra](#) (dead) through his Lrs., the Civil Court decreed eviction but the building was governed by [Haryana Urban \(Control of Rent & Eviction\) Act](#) 11 of 1973. It was held that the decree was without jurisdiction and its nullity can be raised in execution. In *Union of India v. Ajit Mehta and Associates*. Pune, a Division Bench to which Sawant, J. as he then was, a member was to consider whether the validity of the award could be questioned on jurisdictional issue under [section 30](#) of the Arbitration Act. The Division Bench held that Clause 70 of the, Contract provided that the Chief Engineer shall appoint an engineer officer to be sole arbitrator and unless both parties agree in writing such a reference shall not take place until after completion of the works or termination or determination of the Contract. Pursuant to this contract under [section 8](#) of the Act, an Arbitrator was appointed and award was made, Its validity was questioned under [section 30](#) thereof. The Division Bench considering the scope of [Sections 8](#) and [20\(4\)](#) of the Act and on review of the case law held that [Section 8](#) cannot be invoked for appointment of an Arbitrator unilaterally but [section 20\(4\)](#) of the Act can be availed of in such circumstances. Therefore, the very appointment of the Arbitrator without consent of both parties.

30. The Supreme Court in case titled as *Ajudh Raj and Others Vs. Moti S/o Mussadi* reported as AIR 1991 SC 1600 has held as under. Paragraph 5 being relevant is taken note of:-

“5. The principle for deciding the question of limitation in a suit filed after an adverse order under a [Special Act](#) is well-settled. If the order impugned in the suit is such that it has to be set aside before any relief can be granted to the plaintiff the provisions of [Article 100](#) will be attracted if no particular Article of the Limitation Act is applicable the suit must be governed by the residuary [Article 113](#), prescribing a period of three years. Therefore, in a suit for title to an immovable property which has been the subject matter of a proceeding under a [Special Act](#) if an adverse order comes in the way of the success of the plaintiff, he must get it cleared before proceeding further. On the other hand if the order has been passed without jurisdiction, the same can be ignored as nullity, that is, non-existent in the eye of law and it is not necessary to set it aside; and such a suit will be covered by [Article 65](#). In the present case the controversial facts have been decided in favour of the plaintiff-appellant and the findings were not challenged before the High Court. The position, thus, is that the plaintiff was the owner in cultivating possession of the land and the defendant Moti was merely a labourer without any right of a tenant or sub-tenant. The question is as to whether in this background it is necessary to set aside the order passed in favour of the respondent under [Section 27\(4\)](#) of the Act before the suit can be decreed or whether the plaintiff can get a decree ignoring the said order as void, in which case the suit undoubtedly will be governed by [Article 65](#).

31. The Supreme Court in case titled as *Chandrabhai K. Bhoir and others. Vs. Krishna Arjun Bhoir and others* reported as 2009 (2) SCC 315 has held as under. Paragraph 26 being relevant is taken note of:-

“ Thus, the said issue, in our opinion, did not attain finality. In any view of the matter, an order passed without jurisdiction would be a nullity. It will be a coram non judice. It is non est in the eye of law. Principles of res judicata would not apply to such cases.”

32. The Supreme Court in case titled as *Dwarka Prasad Agarwal and Another. Vs. B. D. Agarwal and others* reported as 2003 (6) SCC 230 has also laid down the same principle.

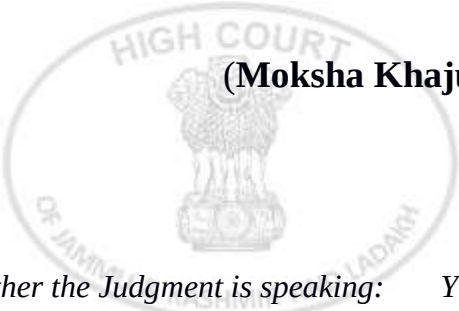
33. It is thus settled by the Apex Court that if an authority acts wholly outside its jurisdiction a citizen does not need to proactively file an appeal to kill something that is already legally dead. Since the decree passed by Assistant Collector, Agrarian is without jurisdiction, as such is void(nullity) in the eyes of law, has no legal sanctity. It is settled law that decree passed by a Court without jurisdiction on the subject matter or on the grounds on which the decree

made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a *coram-non-judice*. The decree dated 22.03.1988 is a nullity and *void ab-initio* as such has no validity as per law.

CONCLUSION

34. In view of above, this Court does not find any perversity in the impugned orders 30.04.2024 and 21.10.2023, passed by respondents 2 and 4 respectively, as such, the instant writ petition being devoid of any merit is dismissed without costs.

SRINAGAR
27.07.2026
“Mohammad Yasin Dar”



(Moksha Khajuria Kazmi)
Judge

Whether the Judgment is speaking: Yes/No
Whether the Judgment is reportable: Yes/No