

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C)No. 1696/2019

01. Abdul Mateen Gupkari, ...Petitioner(s)
S/O. Abdul Rehman Gupkari
02. Naseema Bano
W/O Abdul Rehman Gupkari
03. Mariya Jan
D/O. Abdul Rehman Gupkari.
All residents of 16-Gupkar Road
Srinagar, at present Naseem Bagh,
Srinagar.

Through: Mr. Sheikh Mushtaq, Advocate.

Vs.

1. State of J&K through ...Respondent(s)
Commissioner/Secretary to Govt,
Revenue Department, Civil Secretariat
Srinagar/Jammu.
2. Divisional Commissioner, Kashmir.
3. Deputy Commissioner, Srinagar.
4. Assistant Commissioner (Revenue)
Srinagar.
5. Tehsildar Shalteng Srinagar.
6. Naib Tehsildar Shalteng Srinagar.
7. Patwari Shalgeng Parimpora.
8. Station House officer, Qamerwari
Srinagar.
9. District Police Officer Qamerwari
Srinagar.
10. Sub District Police Officer, Qamerwari
Parimpora Srinagar.
11. Ghulam Hassan Mir S/O. Ghulam Rasool
Mir
R/O. Barthana Qamarwari Srinagar.
12. Tariq Hajam S/O. Mohd Ramzan
13. R/O. Barhana Qamarwari Srinagar.
14. Mohammad Sidiq Matta S/O Late Ashoor
Matta R/O. Qamarwari Barthana
Qamarabad.

Through: Ms. Raheela Khan, AC, vice Mr. A.R. Malik, Sr. AAG,
for 1 to 7
Mr. Hakeem Suhail Ishtiyahq, Adv, for 13.
Mr. Hilal A Wani, Advocate
Mr. I. Sofi, Advocate.

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

JUDGMENT

15.09.2026

Oral:

01. The petitioners through the medium of the instant petition have sought the following reliefs:-

- I. *“Writ of Mandamus, Commanding the officials Respondents to immediately stop the conversion of the land of the petitioners and stop issuing revenue extracts in favour of the private respondents who have manipulated certain documents for depriving the petitioners of their property rights.*
- II. *A Writ of Mandamus, Commanding the respondents to remove the encroachments made over the property of the petitioner with further direction to the SHO concerned to stop all illegal constructions being raised for conversion of the nature of the land in violation of the law.*
- III. *A Writ of Mandamus, commanding the respondent particularly respondent No.2 to conduct thorough enquiry into the matter and take the enquiry to its logical conclusion for taking appropriate action against the respondents for making conversion of the land.”*

02. The petitioners have a common cause of action, common question of fact of law, common grounds of challenge and substantially common reliefs to seek and, accordingly, they came with the institution of the instant petition jointly in order to avoid multiplicity of litigation and the possibility of conflicting verdicts.

03. The petitioners 1 to 3 and Abdul Rehman Gupkari (Father of petitioners 1 and 3 and husband of petitioner no. 2) claimed to have purchased land measuring 42 Kanals situated at Estate Barthana Qamarwari, Srinagar, falling under following Khasra Nos' :-

- i. 294/210
- ii. 299/210
- iii. 300/210
- iv. 302/210
- v. 595/204/210
- vi. 315/210
- vii. 319/210
- viii. 320/210
- ix. 876/328/210
- x. 329/210
- xi. 335/210
- xii. 440/208
- xiii. 916/230/208

04. The aforesaid land, as per the pleadings, was purchased by the petitioners and deceased Abdul Rehman Gupkari in 90's and with the outbreak of militancy in the State, they had to face difficulties to keep the watch and ward over the said property and in view of the law and order problem in the State at that point of time, Abdul Rehman Gupkari in his life time had executed an agreement in the year 2001, appointing private respondent no. 11 as Chowkidar in terms of an agreement executed and registered on 29th November, 2011 before the Sub Registrar, Srinagar.

05. It is pleaded in the instant petition that since the militancy in the State was on peak, the petitioners could

not look after the land and taking advantage of the same, the private respondents had illegally managed to sell the land property by obtaining revenue extracts from the concerned Revenue Authorities in violation of the law. It is further pleaded that the land in question was recorded as agricultural land and any conversion thereof was strictly prohibited in terms of the relevant provisions of the law.

- 06.** It is argued by learned counsel for the petitioners that the private respondents in collusion with the Revenue Authorities have obtained revenue extracts for selling the aforesaid land fraudulently by changing its nature and, accordingly, the private respondents in collusion with the Revenue Authorities have converted the nature of the land by raising constructions over the same. The petitioners, upon coming to know of the illegal acts committed by the respondents, have brought this aspect of the matter to notice of the Higher Authorities including Divisional Commissioner as well as the concerned Revenue Authorities. However, the efforts made by the petitioners have not yielded any response or result, inasmuch as, the Revenue Authorities in collusion with the private respondents managed to sell the land in question in stark violation of the law.

- 07.** It is further submitted that petitioners have repeatedly represented before the Divisional Commissioner, Kashmir, complaining against the privates respondents, who, in league with the Revenue Authorities, have managed to get the revenue record changed with a view to sell the same.
- 08.** It is borne out from the record that the Naib Tehsildar, Zainakote, taking cognizance of the complaint, in terms of Order dated 6th January, 2016, directed the Patwari Halqa (respondent no. 7) to submit requisite report along with the revenue extracts by treating the matter as urgent.
- 09.** Furthermore, the Divisional Commissioner, Kashmir, in terms of the Communication dated 16th November, 2016, directed the Deputy Commissioner, Srinagar, to enquire into the matter, but nothing was done so far, as pleaded by the petitioners in the instant petition and subsequently the Deputy Commissioner in term of Communication dated 19th November, 2016 directed the Assistant Commissioner Nazool Srinagar to conduct in-depth enquiry into the matter and furnish the findings within a period of 15 days time.
- 10.** Accordingly, the Divisional Commissioner, Kashmir, vide Communication dated 16th November, 2017 again directed the Deputy Commissioner, Srinagar to furnish

the factual report within a period of two days by treating the matter as urgent, who, in turn, vide Communication dated 23rd November, 2017 furnished the report before the Divisional Commissioner Kashmir, reporting therein that the enquiry in the matter is yet to be completed and expressed inability to complete the same in view of the fact that the lower rung revenue officials are not cooperating/responding to the enquiry being conducted in the matter. The report, it is stated, itself highlights the vast and a deep conspiracy between the private respondents and the revenue officials to illegally change the nature of the land with the intention to sell out the same without any authority under law.

- 11.** Feeling aggrieved of the illegal acts committed by the officials of Revenue Department as well as private respondents, the petitioners have challenged the same through the medium of the instant petition.
- 12.** It is specifically pleaded in the instant petition that the respondents, with the active help of Revenue Authorities, have caused conversion in the nature of the land which is strictly prohibited in terms of the provisions of the law, besides this, it is also pleaded by the petitioners that this Court, in numerous writ petitions, from time to time, has issued directions for preventing/stopping the conversion of agricultural land and the action of the

respondent with respect to the conversion of the agricultural land is, therefore, not only illegal and contrary to the applicable law, but is also in clear violation and disregard of the directions issued by this Court from time to time.

13. It is pleaded by the petitioners in the instant petition that in view of the conversion of their land by the private respondents with the aid and assistance of Revenue Authorities, the matter assumes great significance and prayed that appropriate directions deserved to be issued for stopping conversion of their land. It is further pleaded that they are being deprived of their property without any authority of law as the right to property being a fundamental right, therefore, they cannot be deprived of the same in the aforesaid manner.

14. It is the specific case of the petitioners that the Revenue Authorities have been issuing revenue extracts in favour of the private respondents, depicting the nature and character of the land contrary to the existing revenue record and, therefore, the nature and character of the land, which stands recorded as agricultural land, has been illegally altered and manipulated. It is further submitted by the petitioners that in terms of the relevant provisions of the applicable Agrarian Reforms Law, the nature and character of Agricultural land cannot be

altered or the land cannot be put to any use other than that which is permissible under law and in that view of the matter, the acts of the private respondents, constitute a violation of the statutory provisions governing the use and conversion of agricultural land. In furtherance to aforesaid illegal acts, the private respondents have fraudulently executed sale deeds in respect of the land belonging to the petitioner that too with the aid and assistance of certain revenue officials, as such, the said officials have not only manipulated the entries in the revenue records but have also illegally altered the ownership column thereof, thereby facilitating the creation of a false and misleading record in respect of the subject land.

- 15.** In the instant petition, the petitioners have pleaded that the enquiry initiated by the Divisional Commissioner, Kashmir, has not been taken to its conclusion and no action has been taken against the revenue officials who have committed illegal acts and managed to change the nature of the land with a view to enable the private respondents to sell the land of the petitioners illegally. It is further pleaded by the petitioners that the documents placed on record pertaining to the enquiry initiated by the Divisional Commissioner, Kashmir, is an eye opener to the fact that the Revenue Authorities have flouted the

law at their pleasure. The petitioners, accordingly, pleaded that the erring officials and the private respondents, therefore, in view of the flagrant violation of the law need to be dealt with strictly for ensuring that common people do not suffer loss of the property at the hands of unscrupulous revenue officials. The change of nature of the land is strictly prohibited under law and for all practical purposes, the agriculture land shall always remain agricultural in nature and any change caused on the same by execute sale deeds illegal, without authority is a fraud and, therefore, the same are vitiated and rendered void.

16. *Per contra*, objections stand filed on behalf of respondents 1 to 7 and 13, in which, the respondents have taken a specific stand that they, pursuant to the directions of competent Authority, a detailed and comprehensive demarcation of the land under reference was conducted by a team of Revenue Officers/Officials headed by Tehsildar Eidgagh Srinagar and a detailed demarcation report was prepared after due verification of revenue record, spot inspection and measurement through Electronic Total Station (ETS).

17. The further stand of the respondents is that as per the Jamabandi for the year 1992-93, the total land measuring 62 Kanals 18 Marlas 36 Square feet is

jointly recorded in the name of Abdul Rehman (Applicant) and his legal heirs (Petitioners), Abdul Rahim (non-applicant) and his legal heirs, and the said entries stand intact and unaltered. The recorded share of the petitioners' side (Abdul Rehman applicant therein) is 31 Kanals 10 ½ Marlas 5 Square feet, whereas the recorded share of the non-applicant side (Abdul Rahim) is 32 Kanals 19 Marlas, thereby constituting the entire estate.

- 18.** In the reply filed by the respondents, a further stand has been taken by the respondents that during the course of demarcation, the team first reconciled the old revenue record with the modern Electronic Total Station measurement and found that the total land existing on spot corresponds substantially with the recorded area, with only a minor variation of about 2.48%, which is technically acceptable and attributable to differences between conventional chain measurement and Electronic Total Station measurement and thereafter, the demarcation team physically identified and mapped the entire estate on spot and record that the land has presently assumed the character of a developed residential colony with approximately fifty-five plots carved out and internal roads laid out for access and connectivity.

19. The further stand of the respondents is that total area under roads, as measured and recorded in the demarcation report comes to 10 Kanals 6 Marlas and 12 Square feet, which serves the entire layout of the colony and benefits all the plot holders irrespective of their original share. The demarcation report specifically and unequivocally records the entire area of roads measuring 10 Kanals 6 marlas 12 Square feet which has been deducted from the share of the petitioners, instead of being proportionately distributed between both co-sharers in accordance with their respective recorded shares. The demarcation report further clarified that as per the principle of proportionate deduction, the road area ought to have been apportioned between the two co-sharers in the ratio of their respective record shares, but in the present layout the burden of the entire road area has fallen upon the petitioner's share.

20. The respondents have also stated in the reply that with regard to alienations, the demarcation report clearly records that the non-applicant side has alienated 100% of its recorded share, i.e., 32 Kanals 19 Marlas, through different sale transactions executed in favour of third parties and, thus, has fully exhausted its entitlement. Insofar as, the grievance projected by the petitioners that order of illegal conversion of agricultural land has been

passed by the respondents and revenue entry has been altered without authority of law, is without any justification as no such order has been passed nor any entry has been made for any purpose and the ownership column in the revenue records continues to reflect the joint names of the recorded co-sharers.

21. The respondents have also taken a stand in their reply that the allegations of fraud, collusion and manipulation levelled in the writ petition are not borne out by the findings of the detailed demarcation report, which was prepared after objective measurement and verification of records and the enquiry report reveals that the real controversy pertains to the manner in which the area under roads has been deducted and whether the same requires proportionate adjustment between the co-sharers, which is essentially a matter of inter se civil adjustment and accounting between co-sharers. It is further stand of the respondents that they neither dispossessed the petitioners nor apportioned their land, and no act attributable to the answering respondents has resulted in deprivation of property, rather, the factual position shows private alienations and internal adjustments between co-sharers. The respondents have acted promptly and in accordance with law by conducting demarcation, placing the factual position on

record, and identifying the precise extent of alienations and road deductions, thereby discharging their statutory duties fairly and transparently.

22. The respondents have further stated in the reply that in view of the detailed findings recorded in the enquiry report, the dispute, if any, is confined to proportionate adjustment of road area and consequences of alienations by the respective co-sharers, which are matters requiring adjudication by a competent civil forum and cannot be resolved in writ jurisdiction and the demarcation report conclusively establishes that the entire share of 32 Kanals 19 Marlas belonging to the non-applicant has been sold and 18 Kanals 11 Marlas out of 31 Kanals-10 1/2 Marlas and 5 Square Feets belonging to the petitioners' have been sold and that the entire road area of 10 Kanals-6 Marlas and 12 Square Feets has been deducted from the petitioners' share, which forms the core factual position emerging from the enquiry, as such, in the light of the above factual and objective findings recorded in the demarcation report, no illegality, arbitrariness or jurisdictional error on the part of Respondent Numbers 1 to 6 is made out. Accordingly, the respondents prayed that the instant petition in view of the aforesaid fact position be dismissed in limini, as the detailed enquiry report clearly clarifies the factual

matrix and does not disclose any unlawful act attributable to respondents 1 to 6.

23. The respondents no. 13 has also filed reply affidavit, in which, he has almost reiterated the same stand as taken by the respondents 1 to 7 in their reply. In addition, the respondent no. 13 has taken a stand that on the application of the petitioner number 1, a committee came to be constituted, headed by sub Divisional Magistrate Srinagar west, to enquire into the matter upon the order of the Divisional commissioner Kashmir dated 23/09/2020 and finally a report came to be submitted which made it clear that petitioner's father (Abdul Rehman Gupkari) and his uncle (Abdul Rahim Gupkari) were having in total 64 kanals, 9 Marlas of land, out of which petitioner's were having 31 Kanals and 10 Marlas of land, the report further clarifies that out of the said land petitioners have sold 18 Kanals, 11 Marlas of land through registered sale deeds to 24 person's, and uncle of the petitioner no. 1 has sold 32 Kanals, 14 Marlas to 22 different persons through registered sale deeds. The vendees, now habitants have further divided the area into more than 100 small plots and every plot has its independent approach road, as such, the during the development of the land into residential colony land measuring 7 kanals, 7 Marlas had

come under the construction of access roads having 12 to 14 feet width. It is further stand of the respondent no. 13 that the statements and grounds raised in the writ petition are purely baseless wherein petitioners have raised infinite disputed facts, petitioners have sold their land through registered sale deeds and those deeds were nowhere challenged, a report came to be furnished by an enquiry team constituted upon the orders of the Divisional commissioner Kashmir, headed by Sub Divisional Magistrate Srinagar, that report is also nowhere challenged, therefore, the instant case is nothing, but abuse of the process of law, wherein petitioners after selling their land after taking considerations, executing sale deeds, are only harassing the lawful owners of the land, by pleading infinite disputed facts. Thus, it has been pleaded by the respondents that the instant writ petition deserves to be dismissed.

- 24.** Heard learned counsel for the parties and perused the material on record.
- 25.** When the learned counsel for the petitioners was confronted with the argument advanced by learned counsel appearing for the respondents that once the sale deed was executed by the petitioners with regard to the land in question, which sale deed was intact, then how

and under what circumstances the instant petition is maintainable, learned counsel for the petitioners fairly submits that insofar as the land sold to the private respondents and other persons who are not parties in the instant petition, is concerned, he has no grievance and, therefore, he would have no objection if the relief which he has claimed for stopping the construction over the said land is not allowed. Therefore, the statement made by learned counsel for the petitioners is taken on record.

26. Mr. Sheikh Mushtaq, learned counsel for the petitioner, in the same breath, submits that insofar as the issue involved with regard to the encroachment of remaining land is concerned, the writ petition survives and therefore, an enquiry is required to be conducted by the competent Authority with a view to arrive at a subjective satisfaction as to whether the remaining land is the proprietary land of the petitioners and whether the same has been encroached or not.

27. The grievance projected by the learned counsel for the petitioners seems to be genuine which is supported by the report submitted by the Sub Divisional Magistrate (SDM), Srinagar, which has been enclosed with the application being CM No. 1359/2022 filed by the

respondent no.13. For facility of reference paras 3 to 7 are reproduced as under:-

3. That the petitioners have sold their land of 31 kanals and 10 marlas under Khasra No.208 and 210 estate Barthana Srinagar to different persons which was a single parcel of land and the persons have constructed structures over the land by lawful means and few left over portion of the land might have come under the development of the approach roads to the colony. The statement made in the writ petition that the petitioners along with their father is the owner of 42 kanal is a sham and a fraudulent statement de hors to the record and the multiple reports prepared by the official Respondents on the request of nonetheless but petitioners.

4. That the applicant/respondent No.13 has purchased a land measuring 1 kanal & 10 marlas under survey No.210 mouza Berthana Srinagar, vide sale deed executed on 30.12.2020 from petitioner No.1 and his father Abdul Rehman Gupkari (father). The land measuring 2 Kanals under survey No.208 was sold to applicant/respondent No.13 by the father of petitioner No.1 Abdul Rehman Gupkari (1073/753/440/208) vide sale deed dated

24.04.2010. Further, petitioner No.1. executed a sale against power of attorney duly registered in favour of applicant/respondent No.13 with specific powers of sale and gift for land measuring more 2. kanals under survey No.210 (812/299/210), which was lawfully, acted upon by the applicant creating lawful interest in favour of third parties in the year 2012. Also, the wife of applicant/respondent No.13 Mst, Zubaida is owner in possession of land measuring 2 Kanals & 10 Marlas under survey

No.210 (805/298/210) which is purchased from different owners of

land other than petitioners, out of said land, she has executed sale deed in favour of Naseer Ahmad Khanday and Ghulam Hassan on 06.10.2021 for land measuring 10 1/2 Marlas and is left

with one kanal and 19 1/2 Marlas of land in her possession and ownership. Since the land under survey numbers as mentioned in writ petition consists of land measuring more than 200 kanals of land belongs to multiple persons as its owners and the order of status-quo has caused immense hardships to the applicant

and other lawful owners of the land at the same time petitioners have no land left in any of the survey numbers in Estate Barthana Srinagar, thus cannot maintain a cause , much less the relief sought as against the applicant/respondent No.13. who had lawful authority to exercise his all rights attached with the land and in no stretch of imagination be termed as encroacher of the land of petitioners.

The necessary sale deeds, sale agreements; power of attorney and revenue extracts authenticated the stand of the Applicant/Respondent No.13 are annexed as Annexure-III, collectively.

5. That the ex-parte order dated 16.09.2020 is prejudicial to the rights of applicant and harshly in operation as against the owners in possession of the land under survey No.208, 209 & 210 Estate Barthana Srinagar, thus is required to be vacated in view of the submissions hereinabove made and also in sequel to the deliberate suppression of material facts made by the petitioners, who have now gone to office of Divisional Commissioner Kashmir with the same cause as agitated in the instant writ petition and despite order of status-quo has issued notices to the lawful occupants including the applicant and his family members seeking forcible unlawful eviction as the petitioner have filed series of miscellaneous petitions including one seeking registration of FIR and restoration of possession before this Hon'ble Court in the pending writ petition which has become a source of unwarranted harassment to the lawful owners, occupants and possessors who is not in a position of even getting the revenue extracts! Fard issued for various collateral lawful purposes despite having lawful right due to the ex-parte order of status-quo passed by this Hon'ble Court. The issuance of Fard or any lawful change under survey No.208, 209 and 210 is completely under the status-quo order implication, even the petitioners have persuaded the office of Divisional Commissioner Kashmir to issue a communication to the SSP Srinagar to take penal action against the applicant and his family members including revenue officials for issuance of any revenue extracts for entire land under survey No.208, 209 & 210 which as submitted is not less than 200 Kanals used these survey numbers when at the same time team constituted has clearly and minutely submitted report to Divisional Commissioner Kashmir,

that petitioners and deceased Abdul Rehman Gupkari has sold their entire land to various persons including applicant and his family and some portion of land has come under approach roads which leads to the houses developed over the land sold by Abdul Rehman and his brother Abdul Rahim approximately. 64 Kanals. The communication of Divisional Commissioner to SSP Srinagar prejudicial to the applicant dated 04.08.2021 is enclosed as Annexure-IV.

6. That the petitioners being day dreamers are trying to created castles in the vacuum without any lawful justification by bringing a cause without availability of any right. The continuation of the ex-parte order is very harsh and unwarranted apart from being a tool of harassment for the applicant, his family and similarly situated hundreds of persons, occupants of approximately 200 Kanals of land under survey No.208, 209 & 210.”

28. In addition, Mr. Sheikh Mushtaq, learned counsel appearing for the petitioners has drawn the attention of this Court to the recommendation of the Enquiry Committee, a perusal whereof reveals that the land measuring 12 Kanals 19 Marals and 136 Square feet remains in the ownership of the petitioners as per the record. The committee has also concluded that the land measuring 7 Kanal and 7 Marlas out of the total land measuring 64 Kanals 9 Marlas and 136 Sft's comes under the access roads for residential plots on spot. Learned counsel for the petitioner further submits that although the report has been submitted by the competent Authority, but till date the finding of the said report has not been brought to its logical conclusion and the action in terms of the aforesaid report has not been taken, with the result the petitioners continue to suffer.

29. Learned counsel for the petitioners submits that he would feel satisfied in case the conclusion drawn by the said committee is brought to its conclusion and action in this regard is taken within some time frame, to which, learned counsel for the respondents are not averse.

30. Therefore, this Court in the aforesaid backdrop deems it appropriate to direct the concerned Deputy Commissioner to take cognizance of the said report and take remedial measures in this regard within a period six weeks from today after affording an opportunity of being heard to all the stake holders including the petitioners as well as the private respondents and pass a detailed consideration order in this regard. It is made clear that the consideration order shall be implemented thereafter within a period of four weeks. It is further made clear that in case the petitioners are not satisfied with the decision which is likely to be taken by the concerned Deputy Commissioner after hearing all the stake holders, they shall be at liberty to challenge the same by way of appropriate proceedings, if so advised.

31. At this stage, Mr. I Sofi, learned counsel appearing for applicant(s) in CM No. 6571/2025 has drawn the attention of this Court to an Order dated 11th August, 2026 passed in the instant writ petition, a perusal

whereof reveals that the Tehsildar Shalteng, Srinagar, who was present in person, has made a categorical statement that as per the demarcation already conducted by Tehsildar Eidgah and Naib Tehsildar Pantha Chowk, he would delineate and process of the application of the applicant herein for the issuance of Fard within a period of four weeks from the date of passing of the said order, which order, according to Mr. I.Sofi, has not been implemented.

- 32.** The concerned Deputy Commissioner, while passing the detailed consideration order in terms of the directions passed by this Court mentioned supra, shall also give due weightage to the Order passed by this Court in the instant petition on 11th August, 2026 mentioned supra
- 33.** The writ petition in the aforesaid backdrop is **disposed of** along with all connected CM(s).

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:

15.09.2026

"Shamim Dar"