

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

Reserved on: 06.06.2026

Pronounced on: 30.06.2026

Uploaded on: 01.07.2026

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

RFA No.58/2024

UNION OF INDIA & ORS.

...APPELLANTS

*Through: - Ms. Masooda Jan, Sr. Advocate, with
Ms. Nazima, Advocate.*

Vs.

ANWAR-UL-ISLAM & ORS.

...RESPONDENT(S)

Through: - Mr. Ibrahim Mehraj, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The appellants/defendants, through the medium of present appeal, have challenged judgment and decree dated 20.06.2020 passed by the learned Additional District Judge, Sopore (hereinafter referred to as the "trial court"), whereby the suit filed by the respondents/plaintiffs has been decreed in their favour.

2) It appears that the respondents/plaintiffs filed a suit for declaration and injunction against the appellants/defendants before the trial court. It was pleaded by the plaintiffs that land measuring 23 kanals 14 marlas along with two structures existing thereon was occupied by the

Border Security Force (BSF) in the year 1995. Later on, possession of the suit property was handed over by BSF to CRPF. In March, 2011, 22 RR of Indian Army came in occupation of the suit property. It has been submitted that till the Army came in occupation of the suit property, the rent in respect of the suit land and the structures existing thereon was being paid to the plaintiff from time to time at the rates fixed by District Development Commissioner, (Ex-officio Chairman of the Rent Assessment Committee) Baramulla. However, after possession of the suit property was taken over by the Army, no rent in respect of the same was being paid to the plaintiffs. It has been submitted that when repeated requests were made by the plaintiffs to the defendants, defendant No.3 vide his communication dated 19.10.2016, forwarded a cheque for an amount of Rs.11,01,525/ to the Deputy Commissioner, Baramulla, for disbursement of rentals to the plaintiffs and other land owners. According to the plaintiffs, the rent was not properly assessed as the latest schedules issued by the Government for payment of the rentals were not taken into consideration, inasmuch as the rates of rent issued by the Chairman, Rent Assessment Committee vide order dated 23.01.2010 have not been taken into consideration by the defendants while calculating the rent.

3) According to the plaintiffs, out of 23 kanals and 14 marlas of land owned by them, 7.2 kanals are under direct occupation of the defendants whereas the adjacent remaining land measuring 16 kanals and 12 marlas is directly affected by the occupation of Army as the same has been enclosed with concertina wire. Thus, according to the plaintiffs, they are entitled to receive rentals for whole of the land measuring 23 kanals and 14 marlas along with structures existing thereon.

4) On the basis of aforesaid pleadings, the plaintiffs sought a decree for declaration that they are entitled to receive rent in accordance with latest schedules for whole of the land measuring 23 kanals 14 marlas situated at Jalalabad Sopore which is under the occupation/affected by the occupation of the defendants along with two buildings/structures existing on the said land. The plaintiffs have also sought a mandatory injunction directing the defendants to pay rentals in respect of aforesaid land and structures existing thereon on revised/latest schedules with a further mandatory injunction directing the defendants to vacate the suit property and hand over the same to the plaintiffs.

5) The suit was contested by the appellants/defendants by filing their written statement, wherein they have

contended that only 06 kanals, 06 marlas and 02 sirsaais along with two structures existing thereon situated at Village Jalalabad Sopore belonging to the plaintiffs is under the occupation of the Army for which rentals have been fixed by the District Rent Assessment Committee @Rs.2,25,384/ per annum for the structures and Rs.5640/ per month for the land which has been released in favour of the plaintiffs. It has been submitted that there is no other land of the plaintiffs existing on spot which has been occupied by the defendants. Thus, according to the defendants, the plaintiffs have no cause of action against them. It has been submitted that the defendants are paying rent for the structures and the land which is under their occupation according to the rates prescribed by the Rent Assessment Committee headed by Deputy Commissioner, Baramulla.

6) Defendant No.6, District Development Commissioner, Baramulla, who was impleaded as proforma defendant, did not contest the suit and he was set *exparte*.

7) On the basis of the aforesaid pleadings of the contesting parties and after recording their preliminary statements, the learned trial court vide its order dated 12.05.2017 framed the following issues:

1. *Whether the Army 22 RR has taken over the possession of the two structures and the land*

underneath and appurtenant thereto measuring 23 kanals and 14 marlas situated at Jalal Abad Sopore owned by the plaintiffs from the CRPF in March, 2011? (OPP)

- 2. Whether the defendants are not paying the rent to the plaintiffs for the use and occupation of two structures and the land measuring 23 kanals and 14 marlas situated at Jalal Abad Sopore as per the latest schedules issued by the Government from time to time? (OPP)*
- 3. Whether the plaintiffs are entitled to rent for the two structures and land measuring 23 kanals and 14 marlas in accordance with the latest schedules issued by the Government? (OPP)*
- 4. Whether the defendants are liable to pay the rent for the land under the direct occupation of the Army and the adjacent land affected by the occupation of Army? (OPP)*
- 5. Whether the defendants have paid the rent to the plaintiffs for the use and occupation of land measuring 6 kanals, 6 marlas and 2 sarsaie with two structures standing thereupon as fixed by the District Rent Assessment Committee and as per the revised schedule prescribed by the Government? (OPD)*
- 6. Whether the plaintiffs are receiving the rentals for the structures and the land, so the suit is hit by doctrine of estoppel? (OPD)*
- 7. Whether the suit of the plaintiffs for want of cause of action is not maintainable, thus liable to be dismissed? (OPD)*
- 8. Whether the suit for want of valuation for the purpose of jurisdiction and payment of court fee is not maintainable? (OPD)*
- 9. Relief.*

8) In order to prove their case, the plaintiffs, besides examining themselves as witnesses, examined PWs Imtiyaz Ahmad Lone, Record Keeper DC office, Baramulla, Mushtaq

Ahmad Pandit, Mohammad Sultan Khan, Peerzada Latief Ahmad, Patwari, and Ghulam Mohammad Lone, Executive Officer, Municipal Council, Sopore, as witnesses in support of their case. The defendants, on the other hand, examined only one witness, namely, Shri Arindam Majhi, ADEO, Baramulla.

9) The learned trial court, after analyzing the evidence on record and after hearing the parties, while deciding issue No.1, came to the conclusion that the defendants are in possession of land measuring 23 kanals and 14 marlas along with two structures belonging to the plaintiffs with effect from 17th March, 2011. While deciding issue Nos.2 and 3, the learned trial court recorded a finding that the defendants have not paid rent for the use and occupation of land measuring 23 kanals and 14 marlas and two structures existing thereon as per the schedule to the plaintiffs. It has also been held by the learned trial court that the defendants are obliged to pay rent to the plaintiffs at the rates mentioned in the latest schedules issued by the competent authority. While deciding issue No.4, the learned trial court came to the conclusion that the defendants have occupied whole of the land measuring 23 kanals and 14 marlas along with two structures. All other issues framed in the suit were also decided in favour of the plaintiffs.

10) The learned trial court, after recording its findings on various issues framed in the suit, passed a decree of declaration

and mandatory injunction against the defendants holding that the plaintiffs are entitled to receive rent for the land measuring 23 kanals and 14 marlas along with two structures situated at Jalalabad Sopore and directed the defendants to pay rent to the plaintiffs in accordance with the latest schedules issued by the competent authority from the date of occupation i.e. from 17.03.2011 till their possession. It was further directed that the defendants are obliged to pay rent to the plaintiffs @Rs.16,875/ per kanal per annum from 17.03.2011 and @Rs.27,843/ per kanal per annum with effect from 16.02.2013. Regarding structures, it was directed by the learned trial court that the defendants shall pay rent @Rs.20,069/ from the date of occupation i.e. 17.03.2011 till March, 2013 and @Rs.23,254/ from April, 2013 till the date of realization along with interest @8%. It was further provided that an amount of Rs.10,23,469 already received by the plaintiffs shall be adjusted. A further direction asking the defendants to continue to pay rent for the suit property in favour of the plaintiffs at the rates mentioned in the schedule, was also issued.

11) The appellants/defendants have challenged the impugned judgment and decree passed by the learned trial court on the grounds that the same is based upon incorrect facts projected by the plaintiffs. It has been further contended that the plaintiffs have not mentioned Khasra numbers, area and ownership in the plaint and on this

ground alone, the suit was liable to be dismissed. It has also been contended that the learned trial court has failed to appreciate that only 17 kanals and 17 marlas of land as specified in Joint Inspection Report dated 28.06.2024 was under the active occupation of the Army and not 23 kanals and 14 marlas as was claimed by the plaintiffs. It has been contended that Halqa Patwari in his statement has admitted that the land under Khasra Nos.312 and 317 is not under occupation of 22 RR but the same is an orchard. It has been contended that the Army has got occupation of 17 kanals and 17 marlas of land under Khasra Nos.321, 322, 323, 324, 325, 326, 327-min, 331-min and 338-min from BSF/CRPF and no additional adjoining land has ever been occupied by the Army. It has been further contended that last rental was paid to the plaintiffs upto the period 31.03.2023 and, therefore, the learned trial court could not have passed a decree in favour of the plaintiffs even for the period for which the defendants had already paid the rent. It has been contended that the Army has never restricted the land owners to use their land but this aspect of the matter has not been taken into consideration by the learned trial court

12) I have heard counsel for the parties and I have also gone through the grounds of appeal, the impugned judgment and the record of the trial court.

13) Certain admitted facts, which emerge from the pleadings of the parties, documents proved on record before the trial court and the assertions made by the appellants in the memo of appeal, are required to be noticed. It is an admitted fact that the suit property before coming into occupation of the appellants was under the occupation of CRPF and prior to that under the occupation of BSF. As per the document, EXPW-R/1, which has been placed on record by the plaintiffs before the trial court and has been proved by PW Imtiyaz Ahmad Lone, Record Keeper of DC Office, Baramulla, land measuring 23 kanals and 14 marlas situated in Estate Jalalabad Adipora, Sopore, was under the occupation of 177 Bn. of CRPF and vide the aforesaid document, rent has been assessed by the District Development Commissioner, Baramulla. Another document, which has been proved before the trial court, is EXPW-R/2. The said document has also been proved by PW Imtiyaz Ahmad Lone, Record Keeper. As per this document, the rent has been assessed by the Deputy Commissioner, Baramulla, for the two structures in favour of the owners with effect from 04.12.1995 at the rates revised from time to time. Thus, it has been proved from the evidence on record that the land measuring 23 kanals and 14 marlas along with two

structures was occupied, previously by CRPF and prior to that by the BSF.

14) It is an admitted case of the appellants/plaintiffs that they came in occupation of the suit land and the structures in March, 2011. The appellants/defendants contend that only 17 kanals and 17 marlas of land has come in their occupation along with two structures standing thereon and that they have not occupied 23 kanals and 14 marlas of land, as has been claimed by the plaintiffs. Before the trial court as well as before this Court, the defendants have placed on record copy of requisition order dated 06.10.2015, according to which only 17 kanals and 17 marlas of land situated at Adipora Jalalabad under Khasra Nos. 321 to 327, 331 and 338 has been requisitioned by the Army. They have also placed on record copy of order dated 05.08.2023 issued by the Deputy Commissioner, Baramulla, whereby the requisition of 17 kanals and 17 marlas at Adipora Sopore has been extended. Although these documents have not been proved before the trial court, yet it has been the consistent stand of the appellants/defendants that only 17 kanals and 17 marlas at Adipora Jalalabad, Sopore, has been under the possession of Army since March, 2011 and

the claim of the plaintiffs that the defendants are in possession of 23 kanals and 14 marlas of land, is not correct.

15) In view of the above position, the only question that falls for determination in this appeal is as to how much land along with structures situated at Adipora Jalalabad, Sopore, is in use and occupation of the defendants.

16) As already stated, the plaintiffs have proved before the trial court that land measuring 23 kanals and 14 marlas along with two structures existing thereon was initially under the occupation of BSF and thereafter under the occupation of CRPF. It has been proved that for the aforesaid chunk of land, rent has been assessed in favour of the plaintiffs in terms of documents EXPW-R/1 and EXPW-R/2. From a perusal of document EXPW-R/1, it appears that while 07 kanals and 02 marlas of land was in occupation of CRPF, remaining 16 kanals and 12 marlas was affected due to barbed wiring/fencing and laying of concertina wire for security purposes. It is the claim of the plaintiffs that whole of the land measuring 23 kanals and 14 marlas along with structures existing thereon, came in occupation of the Army after the CRPF vacated the same in the year 2011.

17) The defendants, however, claim that only 17 kanals and 17 marlas of land is under their occupation for which

they have been paying rent to the land owners including the plaintiffs. The defendants in this regard are relying upon the notification regarding requisition of 17 kanals and 17 marlas of land. Though the original notification has not been placed on record, yet plaintiff No.1 has, during his cross-examination, when confronted with the copy of notification regarding requisition of 17 kanals and 17 marlas of land, stated that he has no knowledge about the same. However, he has not disputed authenticity of the said notification. Therefore, it can safely be inferred that there is a deemed admission on the part of the plaintiffs with regard to authenticity of notification of requisition dated 16.10.2015, which goes on to show that the defendants have requisitioned only 17 kanals and 17 marlas of the land along with structures existing thereon. Out of this requisitioned land, it is the admitted case of the parties that only 06 kanals and 06 marlas of land falling in Khasra No.326 belongs to the plaintiffs.

18) The matter, however, does not rest here. It is the claim of the plaintiffs that they have been unable to use the balance land falling outside the requisitioned land, which is measuring 17 kanals and 08 marlas, because due to security reasons, the Army authorities do not allow them access to

said portion of the land. In this regard, if we have a look at the statements of the plaintiffs, they have stated that they are entitled to rent for the house and of the land which is directly under the occupation of the Army and also for the land affected by the occupation as they have no access to the said land and that they are not in a position to enter the said land due to the fact that there is concertina wire around the land and the security bunkers have been erected in the land. They have also stated that they are not being allowed to enter the land due to security reasons and whole of the land has been rendered out of bounds for them. According to plaintiff No.1, the Army has occupied the front portion of the land leaving back portion of the land without any access for ingress and egress. There is no cross-examination of the plaintiffs on this aspect of the matter.

19) PW Peerzada Latief Ahmad, Patwari, has proved the revenue extracts in respect of the suit land which as per the documents, EXPW-1 and EXPW-2, belongs to the plaintiffs. In the document, EXPW-2, there is a noting by the concerned Patwari that land measuring 23 kanals and 14 marlas is in occupation of the security forces. Patwari Peerzada Latief Ahmad, in his statement, has deposed that on spot the plaintiffs are owners of land measuring 23 kanals and 14

marlas which is presently in occupation of the Army. He has further stated that access to the said land is under the occupation of the Army and that the Army authorities are not allowing use of other portion of the land, as a result of which whole of the land measuring 23 kanals and 14 marlas is under the occupation of Army. In his cross-examination, he has stated that land measuring 07 kanals is under direct occupation of the Army whereas rest of the land is affected by their occupation.

20) PW Mohammad Sultan has stated that the land adjacent to the subject land has been enclosed by the Army authorities by installing two gates and concertina wire. Therefore, the adjacent land to the subject land is also affected due to occupation of the Army. He has further stated that there is a pathway passing through the land under the occupation of Army but the same has been blocked by the Army with wire and that the Army is not allowing any person to pass through the said pathway. In his cross-examination, the witness has repeated and reiterated the same assertions.

21) From the aforesaid evidence on record, it is clear that even though the Army may have requisitioned only 06 kanals and 06 marlas of the land belonging to the plaintiffs but because the balance land measuring 17 kanals and 08

marlas belonging to the plaintiffs is situated towards back side of the requisitioned land measuring 17 kanals and 17 marlas directly occupied by the Army, it is not possible for the plaintiffs to use that portion of the land which, though is not the part of the requisitioned land. In fact, this position gets strengthened from the Joint Inspection report dated 28.06.2024, which has been placed on record by the appellants along with the memo of appeal. The said document is not part of the trial court record and is not a proved document. In the said report, it has been noted that Halqa Patwari has informed that there is no approach to the land under Khasra Nos.312 and 327 as per the revenue record, meaning thereby that the land which is not part of the requisitioned land and which according to the appellants is not under their active use and occupation, has no approach road.

22) The evidence on record, as discussed hereinbefore, clearly shows that the Army authorities are not allowing anyone to use the pathway for approaching this portion of the land through the land which is under the occupation of the Army. Thus, effectively the plaintiffs have been denied the use and enjoyment of the balance land which is not part of the requisitioned land. Thus, even if there is no formal requisition of portion of the suit land beyond 06 kanals and

06 marlas, which has, admittedly, been requisitioned by the Army, the plaintiffs are certainly entitled to claim compensation from the defendants for its use and occupation.

23) From the evidence on record, it is proved that even though the Army authorities have requisitioned only a specified portion of the suit land yet because of the security restrictions, the plaintiffs have effectively been denied access to the remaining portion of the suit land. Thus, plaintiffs may not strictly be entitled to rent for the non-requisitioned area but they would certainly be entitled to compensation for loss of use and enjoyment of that portion of the area. The appellants/defendants cannot avoid liability to pay compensation for the un-requisitioned land once it is shown that in reality, the plaintiffs' access and enjoyment of the balance un-requisitioned portion of the suit land was completely excluded by the actions of the Army. The plaintiffs having been deprived of possession and enjoyment of the portion of the non-requisitioned suit land, they are entitled to compensation for that balance area of the land.

24) While it has been established on record that only 06 kanals and 06 marlas of the suit land along with structures existing thereon belonging to the plaintiffs has been requisitioned by the appellants and that they are obliged to

pay rent in respect of that portion of the property to the plaintiffs at the rates notified by the Rent Assessment Committee from time to time, it has also been established that the appellants have denied access to the plaintiffs to the non-requisitioned portion of the suit land, thereby depriving them from its enjoyment. Thus, the appellants are also obliged to pay compensation for the portion of the suit land measuring 17 kanals and 08 marlas which falls outside the requisitioned land. This amount of compensation has to be assessed on the basis of the rent that is being paid by the Army to the plaintiffs for the portion of the suit land which has been duly requisitioned by them. The learned trial court, while directing the defendants to pay rent to the plaintiffs for whole of the land measuring 23 kanals and 14 marlas, may not have drawn a distinction between the portion of the land which has been actually requisitioned by the Army and the portion of the land which has become unusable by the plaintiffs due to security restrictions imposed by the Army but, nonetheless, the ultimate conclusion drawn by the learned trial court, whereby the defendants have been asked to pay rent to the plaintiffs for whole of the suit land at the rates specified in the schedules issued by the Rent Assessment Committee, cannot be interfered with.

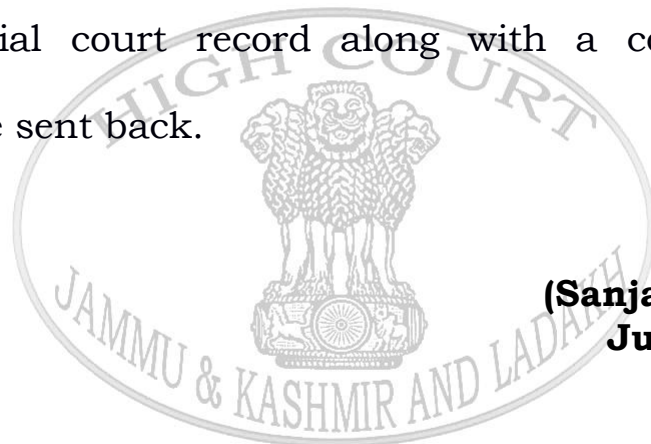
25) Accordingly, while dismissing the appeal filed by the appellants, it is clarified that for the requisitioned portion of the suit land measuring 06 kanals and 06 marlas, the appellants/defendants shall pay rent to the plaintiffs at the rates specified by the Rent Assessment Committee from time to time and for balance portion of the suit land measuring 17 kanals and 08 marlas, they shall pay compensation for its use and occupation to the plaintiffs at the same rates. The judgment/decreed passed by the learned trial court shall stand modified to the aforesaid extent.

26) The trial court record along with a copy of this judgment be sent back.

SRINAGAR

30.06.2026

"Bhat Altaf-Secretary"



**(Sanjay Dhar)
Judge**

Whether the **judgment** is reportable: **YES/NO**