

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

**WP (C) No. 1821/2024
CM No. 4922/2024**

Reserved On: 20th of April, 2026.
Pronounced On: 22nd of April, 2026.
Uploaded On: 22nd of April, 2026.

Whether the operative part or
full Judgment is pronounced: **Full.**

1. **Ghulam Nabi Allaie**, Age: 70 Years
2. **Gulzar Ahmad Allaie**, Age: 55 Years
3. **Mushtaq Ahmad Allaie**, Age: 50 Years

Sons of Late Ab. Khaliq Allaie
Residents of Naina GB Khalil Bijbehara,
District Anantnag, Kashmir.

... Petitioner(s)

Through: -

Mr Rizwan-ul-Zaman Bhat, Advocate.

V/s

1. **Union Territory of Jammu & Kashmir through**
Commissioner/ Secretary to Govt.,
School Education Department,
Civil Secretariat, Srinagar.
2. Director, School Education,
Kashmir, Srinagar.
3. Deputy Commissioner, Anantnag.
4. Collector, Land Acquisition, Anantnag.
5. Chief Education Officer, Anantnag.
6. Zonal Education Officer, Bijbehara, Anantnag.

... Respondents

Through: -

Mr Bikramdeep Singh, Dy. AG.

CORAM: HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(JUDGMENT)

01. The Petitioners claim to be joint owners in possession of a piece of land measuring 01 Kanal and 06 Marlas falling under Survey No.

135 situate at village Naina, Gund Baba Khalil, Tehsil Bijbehara, District Anantnag, having devolved upon them after the death of their father; that the land of the Petitioners was occupied by the Respondents for construction of Government High School Naina, Gund Baba Khalil, Bijbehara, District Anantnag without acquiring the same in terms of the Land Acquisition Act; and that the father of the Petitioners had approached the Respondents for grant of compensation and after his death, the Petitioners had also been pursuing the case of compensation before the Respondents but they were denied the compensation, for their land.

02. It has been pleaded that when no compensation was provided to the Petitioners, they served a legal notice upon the Respondents on 14th of November, 2023 seeking compensation of the subject land at market value, however, the said legal notice did not evoke any response on part of the Respondents. In such circumstances, the Petitioners claim to have been constrained to file the instant Writ Petition before this Court, thereby seeking a direction upon the Respondents to formally acquire the subject land of the Petitioners in terms of law without any further delay and pay them adequate amount of compensation with respect thereto at the prevalent market value.

03. The Respondents have filed their Objections/ Reply, stating therein that the aforesaid land was donated by the locals of the area to the Education Department in the year 2006 purely on charitable grounds; that the land donor-Haji Munawar Allaie, who is the uncle of the Petitioners, never claimed any compensation for the donated land until his death on 23rd of August, 2012; and that upto the year 2015, no representation or claim regarding compensation for the subject land was submitted by the legal heirs of the deceased, as such, the Petitioners have approached this Court now after inordinate delay and the petition is liable to be dismissed for delay and laches.

04. Learned Counsel for the Petitioners has, vehemently, argued that the Petitioners' land is stated to have been under the possession of the Respondents, who had constructed building of Government Primary School, Naina, Gund Baba Khalil, when, at the relevant point of time, the right to hold property was a fundamental right guaranteed to the citizens of the country and such a fundamental right could not have been waived off by a citizen by remaining silent for pretty long time, more particularly, when the Government has failed in its constitutional obligation to follow the process of land acquisition, before taking over the private property of the citizens. He would argue that the Respondents have failed to place on record either any document so as to suggest that land in question had been donated by the predecessor-in-interest of the Petitioners to the Respondents, as claimed by them or any revenue entry with regard to this fact and in such a situation, the Respondents cannot take refuge under the plea of delay and laches, so as to deny the legitimate right of the Petitioners to hold their property or to seek compensation for that. He, thus, prayed that the Petition be allowed and the Respondents be directed to either handover the vacant possession of the land to the Petitioners or to pay its compensation to the Petitioners at the prevailing market value in the area.

05. Learned Counsel for the Respondents, *ex-adverso*, argued that the building of Government Primary School over the land in question was stated to have been constructed apparently on the land having been donated by the predecessor-in-interest of the Petitioners to the School Education Department; and that after such an inordinate delay, the Petitioners cannot maintain their right over the aforesaid land and their Petition is liable to be dismissed, suffering from delay and laches. It was, accordingly, prayed that the Petition be dismissed.

06. Heard learned Counsel for both the sides and considered the matter.

07. The facts which emerged out of the pleadings are that the subject matter of this Petition, i.e., land measuring 01 Kanal and 06 Marlas falling under Survey No. 135 situate at Village Naina, Gund Baba Khalil, Tehsil Bijbehara, District Anantnag, was admittedly used for the construction of Government High School Naina, Gund Baba Khalil, Bijbehara, Anantnag. Though, the Respondents claim that this piece of land had been donated by the predecessor-in-interest of the petitioners, however, during hearing of this case, the learned Counsel for the Respondents failed to substantiate this fact by making reference to any document evidencing the donation or to any entry made in the revenue record regarding the fact of donation. As such, the Respondents failed to substantiate the claim with regard to donation of the land.

08. The Respondents, having occupied the private property without following due process of law or paying of compensation amount thereto, cannot claim to have perfected their title to the land in question through adverse possession and also cannot deny compensation based on delay and laches. Insofar as the donation is concerned, such a claim must be supported by evidence and mere presumption, based on lack of contemporaneous protest by the land owner, is not enough. In absence of evidence, plea of donation is liable to be rejected.

09. The contention of the Respondents that the land in question had been donated in their favour by the predecessor-in-interest of the Petitioners, besides being not substantiated, cannot be accepted, as in a similar plea raised before the Apex Court by the State of Himachal Pradesh in case '**Vidya Devi vs. State of Himachal Pradesh & Ors.**', reported as '**2020 (2) SCC 569**', that the predecessor of the Appellants therein had orally consented to the acquisition, but the Hon'ble Supreme Court rejected the same, terming it as a case of lack of authority and legal sanction in compulsorily divesting the appellant of her property by the State.

Paragraphs No. 12.1 to 12.12 of **Vidya Devi's** case (*supra*) are worth taking note of and are thus set-out below: -

“12.1. The Appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution. Article 31 guaranteed the right to private property which could not be deprived without due process of law and upon just and fair compensation.

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

12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution.

Reliance is placed on the judgment in *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai*, wherein this Court held that: (SCC p.634, para 6):

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

12.4. In **N. Padmamma v. S. Ramakrishna Reddy**, this Court held that: (SCC p.526, para 21):

‘21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300A of the Constitution protects

such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300A of the Constitution of India, must be strictly construed.'

12.5. **In Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P. & Ors.**, this Court recognized the right to property as a basic human right in the following words (SCC p.379, para 30:

'30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed, the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists.'

12.6. In **'Jilubhai Nanbhai Khachar v. State of Gujarat'**, this Court held as follows: (SCC p.627, para 48):

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

12.7. In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

12.8. The contention of the State that the Appellant or her predecessors had "orally" consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the Appellant of her property by the State.

12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on

the judgment of this Court in *Tukaram Kana Joshi & Ors. v. M.I.D.C & Ors.*, wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in *State of Haryana v. Mukesh Kumar* held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multifaceted dimension.

12.11. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to "adverse" possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.

12.12. The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice."

10. Otherwise also, the plea of the donation of the subject matter is plea of fact which needs to be proved by reference to evidence whether documentary or oral. The Respondents seem to have presumed it as donation of land on the ground that the predecessor-in-interest of the Petitioners, during his life time, and, thereafter, the Petitioners, for pretty

long time, did not dispute the possession of the Respondents by approaching them for payment of compensation, however, there cannot be any justification of donation by the predecessor-in-interest of the Petitioners, who had a small parcel of land, particularly, when no evidence has been placed on record.

11. A Division Bench of this Court in case titled '**Mushtaq Ahmad Jan & Ors. Vs. Govt. of J&K**', reported as '**2025 AIR Jammu and Kashmir 135**', has also held that the 'Right to Property' is a constitutional and human right and the Government cannot forcibly occupy the private property without due process of law or paying compensation, besides, the delay and laches cannot be a ground to deny compensation for continuing unauthorized possession by the Government. Paragraph No.13, being relevant, is extracted hereunder:

“13. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Writ Court runs contrary to the view taken by the Hon'ble Supreme Court in the case of Vidya Devi supra. Under somewhat similar circumstances, a case of one Amina Begum was considered by a Division Bench of this Court in LPA No. 105/2019 titled Amina Begum vs. State of JK & Ors. The Division Bench relying upon the judgment of the Hon'ble Supreme Court in Vidya Devi and the other one titled State of UP & Ors. vs. Manohar reported in AIR 2005 SC 488 rejected the similar plea of delay and laches put forth by the Union Territory of J&K in the aforesaid case.”

12. Having regard to the above-referred legal precedents and the undisputed facts that the Petitioners had been divested of their land by the Respondent-School Education Department of the Government of Jammu & Kashmir, unauthorizedly. Both the contentions of the Respondent-Department: (i) with regard to donation by the predecessor-in-interest of the Petitioners; and (ii) defeating the claim of the Petitioners, as successors-in-interest of their father, being inordinately delayed cannot be accepted, in

view of the factual background that there being neither any documentary evidence with regard to donation by the Petitioners or their predecessor-in-interest or any revenue entry in this behalf and that the landholder cannot be divested of his landed estate by the Government or its functionaries, without resorting to its acquisition or payment of compensation and even a delayed claim for compensation cannot be turned down.

13. Viewed thus, this Court is of the considered view that the Petitioners are entitled to be compensated for deprivation of their property. The present Petition is, thus, **allowed** with a direction to the Respondent No.1 to immediately and forthwith initiate the process of acquisition of the land in question, in accordance with “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013”, within a period of four weeks from the date a copy of this Judgment is supplied to them and determine the compensation payable to the owners of the subject land under possession of the School Education Department and thereafter the compensation be paid to the Petitioners, expeditiously.

14. The Petition is, thus, **disposed** of on the above terms, along with pending application(s), if any

(M. A. CHOWDHARY)
JUDGE

SRINAGAR
April 22nd, 2026
“TAHIR”

i. Whether the Judgment is approved for reporting? **Yes.**