

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA 171/2023
CM(5407/2023)

BASHIR AHMAD RATHER AND ORS.

... APPELLANT(S)

Through:
Mr. G.A. Lone, Sr. Advocate with
Mr. Mujeeb Andrabi, Advocate

V/s.

STATE OF J AND K AND ORS.

...RESPONDENT(S)

Through:
Mr. Rizwan Ul Zaman Bhat, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

ORDER
11.09.2026

1. The learned Senior Counsel for the petitioners has taken this Court through the prayers made in the writ petition, which reads as follows:

- i) Writ, Order or direction in the nature of Certiorari for quashing the impugned mutation No.327 of Village Moominhall Tehsil & District Anantnag and also the entries made on the basis of said mutation in the revenue record pertaining land measuring 24 Kanals 05 Marlas comprising of survey Nos.383/18 (7 Kanal 1- Marla), 383/25 (04 Kanal 04 Marlas), Survey No.384/28(01 Kanal 18-Marlas), 387/41 (18 Marlas) situate at Village Moomin Hall Tehsil & District Anantnag.
- i(a) Writ, order or direction in the nature of Certiorari for quashing the order of District Magistrate dated 14-09-2011 bearing No. DCA/Mig/Camp/660
- i(b) Writ, order or direction in the nature of Certiorari for quashing the Supardnama dated 28-01-2012.

- (ii) Writ, Order or direction in the nature of Certiorari for quashing the order of District Magistrate (Deputy Commissioner) Anantnag dated 6-12-2011 in case Gaffar & Sultan Parray & Ors Vs. Petti Devi & Anr.
- (iii) Writ, Order or direction in the nature of Mandamus commanding the respondents to make entries of ownership in favour of petitioners on the basis of tenancy recorded in 1971 and bring mutation No.279 of village Moominhall to its logical conclusion by attesting mutation in favour of petitioners under Section 8 of J&K Agrarian Reforms Act.
- (iv) Writ, Order or direction in the nature of Mandamus commanding the respondents to vest the land measuring 24 Kanals 05 Marlas comprising of survey Nos. 383/18 (7 Kanal 1- Marla), 383/25 (04 Kanal 04 Marlas), Survey No.384/28(01 Kanal 18-Marlas), 387/41 (18 Marlas) situate at Village Moomin Hall Tehsil & District Anantnag in favour of the State with further direction to allot the land in favour of petitioners who were its tenants.

2. The learned Senior Counsel for the appellants submits that the land in question, measuring 48 kanals 10 marlas, is situated at village Moomin Hall, Tehsil, Anantnag, and has remained in the tenancy of the appellants and their predecessors-in-interest for a long time. The counsel for the appellants, however, submits that the respondent Nos. 6 and 7 were the owners of the land, and that the land was mutated in terms of Section 4 of the Jammu & Kashmir Agrarian Reforms Act in favor of the State, whereby the owners of the land were declared ex-owners and the appellant/petitioners were declared as prospective owners.

3. The counsel has drawn the attention of this Court to the fact that Mutation No. 279 of village Moominhal was attested by the Tehsildar, Agrarian Reforms, Tehsil Anantnag, whereafter the ex-owners filed an application under Section 7 of the Agrarian Reforms Act for resumption of the land.

4. The application under Section 7 of the Agrarian Reforms Act, after due process of law, was allowed and decided by the concerned authority vide Mutation No. 327 dated 27.07.1985, while resuming 24 kanals and 05 marlas of the land to the ex-owners with the direction to

hand over the possession of the land to them. The remaining portion of land, 24 kanals and 05 marlas, was ordered to be attested in the ownership of the appellants under Section 8 of the Agrarian Reforms Act.

5. The learned Senior Counsel fairly submits that both the parties were thus beneficiaries of the Agrarian Reforms Act, which virtually resulted into the division of the 48 kanals and 10 marlas of land between both the parties - one by virtue of resumption to the original owners, and the other part being allotted to the tillers i.e., the appellants.

6. The learned Senior Counsel submits, however, the bone of contention today is the portion of land which was resumed in favor of the private respondent-owners, whereas the resumption was contrary to law inasmuch as it did not conform to the parameters laid down in the Agrarian Reforms Act, and that the requisite process of law, including conducting of inquiry, was not done by the concerned authorities. Counsel further submits that appellants/petitioners were not given a chance to produce any kind of evidence to show that the ex-owners were not entitled to resumption and that the transfer of the land through a decree of sale was suppressed by the ex-owners

7. The learned Senior Counsel also tried to submit that the basic legislative intent behind the Agrarian Reforms Act, 1976 was that a person seeking resumption was required to personally cultivate the land after the resumption was ordered, however, in the present case, the ex-owners never returned to the land and made no effort, even after resumption, to cultivate the land in question, thereby debarring them from the benefit of resumption under Section 7 of the Agrarian Reforms Act.

8. The counsel submits that there was an intervening event, in that the appellants were contesting the resumption in favour of the original ex-owners, respondent Nos. 6 and 7, in a pending appeal, they entered into a compromise. Under the compromise, the appellants surrendered their claim to the entire land ordered to be resumed in favour of the ex-owners, by paying an amount of Rs. 1,30,800/-, out of which Rs. 30,800/- was paid in cash and a cheque for Rs. 10,000/- was issued in the name of Radha Krishna Misri (attorney holder). The remaining amount was agreed to be

paid by the end of the year 1997. The agreement was reduced in writing, but the balance amount was not paid.

9. The learned Senior Counsel has also made a submission that the ex-owners thereafter sold the land to respondent No. 9 under an agreement to sell, and the sale was under a fixed consideration, which has been received, and thus, they are not entitled to the benefits of the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997.

10. The learned Senior Counsel tried to persuade the Court that the appellants case is twofold: *first*, that the resumption to the private respondents itself was bad in law, and *second*, that even if the resumption is held to be valid, the ex-owners, having further sold the land, would not be entitled to the remedy under the Act of 1997.

11. The learned Senior Counsel for the appellants further submits that, pursuant to the compromise, the appeal against resumption to the private respondents was not pursued and was consigned to the records. The counsel also tried to submit that since the appeal has remained consigned to the records since 1987, it would be in the fitness of things to permit the appellants to revive the appeal in question. The learned Senior Counsel submits that the appellants are in continued possession of, and are cultivating, the land in question, and that this possession has only been disturbed by the private respondents, who claim to be the owners subsequent to the resumption.

12. The learned Senior Counsel also submitted that throughout the proceedings which were conducted either under the Agrarian Reforms Act, 1976, or the Jammu and Kashmir Migrant Immovable Property Act, 1997, the procedure prescribed by law was not strictly followed, and that the respondents were simply trying to take advantage of the 1997 Act and were trying to get possession by virtue of the powers given under Section 5 of the Act of 1997, which have been exercised by them. The counsel submits that Section 7 of the Agrarian Reforms Act envisages certain mandatory requirements, including cultivation and continued residence in the village or its surrounding area, but the same have not been abided by the respondents at any juncture throughout this time duration.

13. The learned Senior Counsel submits that it would be very unfair to deprive the appellants of their possession and ownership of the land in question, inasmuch as neither was the resumption correct in the law, nor is the order under Section 5 of the Act of 1997 for eviction in accordance with law. He also submitted that even if any right survives under the agreement entered into between the parties, the right remains with the appellants and that the subsequent sale of the land would also render the owners ineligible to seek eviction under the Act of 1997.

14. The counsel for the respondent, on the other hand, submits that the resumption in favour of the private respondents cannot be challenged in these proceedings under Article 226 of the Constitution, and that any right the appellants may have had against the resumption ought to have been pursued in the appeal filed by them, which has remained consigned to the records since 1987 and thus barely any right survives in their favour to challenge the resumption at this stage.

15. The counsel for the respondents further submits that the agreement said to have been entered into with the appellants is denied by the respondents, and that the respondents are, in fact, entitled to own the property once a valid resumption order has been passed under Section 7 of the Agrarian Reforms Act, and that such an order cannot be challenged here in the proceedings involving disputed questions of fact.

16. The counsel for the respondents further submits that once the land was resumed in favor of the private respondents in conformity with Section 7 of the Agrarian Reforms Act, all rights over the land in question vested in them and in the given factual circumstances, it was correct for the respondents to invoke the provisions of the Act of 1997, which entitles them to all the rights claimed in respect of the property in question.

17. The counsel for the respondents submits that for the order passed under Section 5 of the Act of 1997, the remedy was in an appeal under Section 7 of the Act of 1997.

18. After hearing learned counsel for the parties, this Court has perused Section 7 of the Agrarian Reforms Act, which reads as follows:

“7. Resumption for bona fide personal cultivation by ex-landlord.— (1) Subject to the provisions of this section—

- (a) an individual, whose rights in land have been extinguished by section 4 and who was entitled to recover rent in Kharif, 1971 directly from the tiller, may resume land outside demarcated forests for purposes of bona fide personal cultivation;
- (b) where rights in land of one or more than one member of a family have been extinguished by section 4 and such member or members were entitled to recover rent in Kharif, 1971 directly from the tiller, such member or members may resume land for bona fide personal cultivation;
- (c) a displaced person allotted evacuees' land or land included in Schedule II, who is not cultivating such land personally, may resume such land for bona fide personal cultivation.

(2) Resumption of land permitted by sub-section (1) shall be subject to the following conditions, namely: —

- (a) the application for resumption shall be made in the prescribed manner within 1 [one year] of the commencement of this Act ;
- (b) the applicant for resumption, shall 2 [within six months from the date of resumption of land] take up normal residence for the purpose of cultivating such land personally in the village in which the land sought to be resumed is situated or in an adjoining village 3 [except in the case of —
 - (i) a person serving in defence force, who shall take up such normal residence for personal cultivation within six months of the date on which he ceases to serve in defence force; or
 - (ii) a widow or a person who is physically disabled or incapacitated by old age or infirmity] :

Provided that in the case of land situated in an un-inhabited village on or near the border, such residence shall be taken up within the period indicated above in the nearest inhabited village or in the adjoining village:

Provided further that a displaced person who has been allotted land in more than one village, shall take

up such residence in any one of such villages or in the adjoining village :

⁴ [Provided also that a person who is minor or insane shall take up such residence within six months of the date on which he attains the age of majority or attains sanity.]

- (c) land held by a tiller paying rent at village rates (hasab-partadeh) with or without malikana or by a tiller, who is an occupancy tenant, shall not be resumed;
- (d) no person, who or any member of whose family, if any, is an income-tax payer, shall be eligible to resume any land ;
- (e) the person who has transferred land by sale or gift or bequest on or after first day of September, 1971 shall not be eligible to resume land if the land so transferred was personally cultivated by him prior to such transfer ;
- (f) the extent of land that may be resumed shall, subject to the provisions of sub-section (3), be determined in the following manner, namely : —
 - (i) where a person was entitled, as according to records, to rent in kind from the tiller during Kharif, 1971, the extent of the land resumable by such person shall bear the same proportion to the total land comprising the tenancy as the rent in kind bears to the total produce ;
 - (ii) where a person was entitled, as according to records, to rent in cash during Kharif, 1971, the extent of land resumable by such person shall be regulated by the extent of rent in kind to which such rent in cash can be commuted in accordance with the provisions of subsections (3) and (8) of section 9 ;
 - (iii) a person serving in defence force on or after the 1st day of April, 1965, 1 [an ex-serviceman of the defence force] or a widow or an orphan who is minor or a lunatic or an imbecile, or an insane person or a person who is crippled or incapacitated by old age or infirmity, shall be permitted to resume land twenty per centum in excess of the land otherwise resumable under sub-clauses (i) or (ii).

²[(g) no person, who or any member of whose family holds an orchard exceeding one hundred kanals, shall be eligible to resume land].

(3) The aggregate land that a person resuming land shall hold in personal cultivation, after resumption, along with other members of the family, if any, to which he belongs, shall not exceed 6.50 standard acres where such person belongs to the category of persons mentioned in sub-clause (iii) of clause (f) of sub-section (2) and five standard acres in other cases :

³[Provided that an ex-servicemen of the defence force or a person serving in defence force shall be allowed to hold one additional standard acre over and above ceiling fixed in this sub-section :

Provided further that in the case of a person eligible to resume land under clause (g) of sub-section (2), the aggregate land including the orchard held by him shall not exceed one hundred kanals].

(4) The person resuming land under this section shall be vested with ownership rights in such land, other than evacuees' land, and he shall be placed in possession thereof, after the tiller removes the crop, if any, standing on such land and, where no crop is standing but the land has been prepared for sowing, after such tiller is paid therefor in the prescribed manner.

(5) Where any person resuming land under this section fails to cultivate the land personally within one year of entering into possession, such land shall vest in the 1 [Union territory of Jammu and Kashmir], except where such failure is due to circumstances beyond his control.

(6) The identity of the land to be resumed shall be determined by a Revenue Officer, in the prescribed manner, having regard to the reasonable convenience of both the parties :

Provided that land under and appurtenant to a dwelling house mentioned in section 6 shall not be resumed.

Explanation.—For purposes of this sub-section, the land under and appurtenant to the dwelling house shall not, along with the land exempted by clauses (j) and (1) of section 3 and land under and appurtenant to a building or structure in a municipal area, town area, notified area or village abadi, exceed four kanals for a family.

(7) No resumption by consent shall be permissible if, as a result of such consent, the ex-landlord is able to resume more land than he is entitled to according to the provisions of this section.”

The Court has also perused Section 4 of the Act, pointed out by the counsel for the parties, which reads as follows:

“4. Vesting in the State of rights in land not held in personal cultivation.

1) Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of this Chapter, all rights, title and interest in land of any persons, not cultivating it personally in Kharif, 1971, shall be deemed to have extinguished and vested in the 1 [Union territory of Jammu and Kashmir], free from all encumbrances, with effect from the first day of May, 1973.

(2) Nothing in sub-section (1) shall apply to—

(a) land held by gumpa of Ladakh Districts :

Provided that the rights of tenant thereof shall be heritable according to the law of succession applicable to occupancy tenants and that no tenant or his successor shall be subject to payment of rent exceeding [XXX] the prevailing rent, [XXX] whether in cash or in kind;

³[(b) (i) unit of land not’ exceeding 182 kanals including residential sites Bedzars and Safedzars ; and

(ii) [Land]

held by such places of worship, waqafs or Dharmshallas, as are recorded in the revenue records or 5 [notified by the Government from time to time or donated for purposes of wakaf by any person professing Islam or used as a wakaf property] :

Provided that the rights of tenant thereof shall be heritable according to the law of succession applicable to occupancy tenants ;

⁶[x x x].

(c) land mentioned in Schedule II allotted to a displaced person :

Provided that :—

- (i) such land and evacuees' land, if any, allotted to the same displaced person, is situated in more than one village ; and
- (ii) (such displaced person cultivated personally the land in at least one village in Kharif, 1971.”

The Court has further perused Rule 17 of the Agrarian Reforms Rules, 1977, which reads as follows.

“17. Private Agreement---Before proceeding to identify land to be resumed by the petitioner, the Revenue Officer shall afford an opportunity to the parties to arrive at an agreement, subject to the provisions of sub-section (7) of Section 7.”

The provisions of the Jammu & Kashmir Migrant Immovable Property (Preservation, Protection and Restraint On Distress Sales) Act, 1997 have also been placed before the Court. Sections 5 and 7 thereof reads as follows.

“5. Eviction of unauthorised occupant.— If any unauthorised 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.”

“7. Appeal.— (1) Any person aggrieved of an order passed under this Act, may file an appeal before the Financial Commissioner, Revenue:

Provided that no such appeal shall be entertained against—

(a) an interlocutory order;

(b) an order of eviction unless possession of the property is surrendered to the competent authority;

(c) an order of payment of compensation determined under this Act unless the amount of compensation is deposited with the appellate authority.

(2) The period of limitation for filing of an appeal under sub-section (1) shall be fifteen days from the date of order appealed against.”

19. The contours of the controversy have been accurately drawn by the learned Single Judge and in terms of the factual matrix of the case, this Court takes note of the fact that the dispute arose when the property belonging to the respondents was initially taken away from them under Section 4 of the Agrarian Reforms Act. The taking away of the property was contested by the private respondents, and in the meanwhile, rights accrued in favour of the appellants in respect of the property which is 24 kanals and 5 marlas out of 48 kanals and 10 marlas.

20. While the appellants rights accrued as owners of that part of the land, the respondents invoked Section 7 of the Agrarian Reforms Act, which is in tandem and in consequence of the earlier reversal of their rights under Section 4 of the Act, and thus, the resumption was made on 27.07.1985, restoring the rights of the owners as provided in the law.

21. The consequential mutation was challenged by the appellants by way of an appeal, which remained pending before the appropriate authority. It is the appellants’ own case that, in the course of these proceedings, the original owners entered into a compromise with the appellants, and, settled the dispute in a manner which would not amount to a sale, but would amount to surrendering of their claim to the 24 kanals and 5 marlas resumed in favour of the ex-owners. The learned Senior Counsel himself pointed out that it was not actually a sale, but a right relinquished in terms of law by the original owners, the details of which have already been narrated in the factual matrix of this order.

22. The fact that the appeal was given up and consigned to records, almost in terms of law, upholds the proposition of resumption of the land under Section 7 of the Agrarian Reforms Act in favor of the private respondents, unless any appropriate remedy, which the appellant may have, is invoked by them.

23. This Court also takes note of the fact that the subsequent agreement between the parties would not have any consequence at this stage, because the prayers sought for were confined to the quashing of resumption and the quashing of the order under Section 5 of the Act of 1997, whereas the correctness of the resumption itself could have been contested in the appropriate proceedings, which were voluntarily given up by the appellants in the circumstances narrated above.

24. Thus, this Court does not wish to go into the details as to whether the resumption under Section 7 of the Agrarian Reforms Act was correct in the eyes of law or not, because that was the subject matter of separate proceedings, which was undertaken and contested by both parties, and laid to rest by the appeal of 1987 consigned to record.

25. So far as Section 5 of the Act of 1997 is concerned, once the proceedings under Section 7 of the Agrarian Reforms Act today are sustained in the present perspective at this stage, then Section 5 is a right which has arisen out of the Act of 1997, and thus such right exercised by the owners cannot be said to be bad in the eyes of law. Moreover, against the order under Section 5 of the Act of 1997, there is an appeal under Section 7 of the Act of 1997 which was an appropriate remedy for the appellants.

26. This Court finds that both the parties have, at different points, been beneficiaries of the Agrarian Reforms Act, but at the same time, due to the long passage of time and frequent changing of the forums in which the resumption has been challenged, and thereafter, the invocation of Section 5 of the Act of 1997, this litigation has been put in a prolonged process which needs to be given a quietus only to the extent of invocation of Section 5 of the Act of 1997 and Section 7 of the Act of 1997, at this stage, while leaving it open to the parties to seek such other remedies as may be available to them in law.

27. This Court is in complete agreement with the order passed by the learned Single Judge, who has rightly noted that order under Section 5 of the Act of 1997 has a remedy under Section 7 of the Act of 1997 to the appellants. For the aforesaid reasons, no interference in the impugned order is called for. However, it shall be open to the appellants to seek any of the rights which are available to them strictly in accordance with law.

(SANJEEV KUMAR)
JUDGE

(DR. PUSHPENDRA SINGH BHATI)
CHIEF JUSTICE

SRINAGAR:

11.09.2026

Junaid

