

Serial No. 15

Regular list.

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR.**

WP (C) No. 2363/2026.

CM No. 6430/2026

1. Ghulam Mohammad Khan
2. Abdul Gaffar Khan
3. Ghulam Nabi Khan
4. Ghulam Ahmad Khan
Sons of Aziz Khan
5. Mohammad Afzal Khan.
6. Faqir Mohammad Khan
7. Mukhtiyar Khan
8. Abdul Wahid Khan
9. Barketullah Khan
Sons of Gulzar Khan.
All residents of Baduaab Tulail Guriez, District, Bandipora.

..... Petitioner(s)

Through: -

Mr. Adil Parray, Advocate.

V/s

1. Union Territory of Jammu & Kashmir through
Commissioner/Secretary to Govt, Public Works Department,
Civil Secretariat, Srinagar.
2. Deputy Commissioner, Bandipora.
3. Chief Engineer Public Works Department, Srinagar (R&B) Department.
4. Superintending Engineer R & B Circle District Bandipora (Public Works Department).
5. Chief Education Officer, Bandipora.
6. Principal Government Higher Secondary School Baduaab Tulail, Bandipora.
7. Sub-Divisional Magistrate (SDM) Guriez, District Bandipora.
8. Tehsildar Tulail, District Bandipora.
9. M/S Naseeb Guilders, through its Managing Director Mushtaq Ahmad Dar
having its branch office at Firdous Abad Batamaloo, Srinagar (Contractor)

..... Respondent(s)

Through:-

Mr. Shahbaz Sikander, AAG.

Mr. T. A. Lone, Dy. AG.

CORAM:**HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE****(ORDER)**

21.09.2026.

(Oral)

1. Mr. Shahbaz Sikander, learned AAG and Mr. T. A. Lone, learned Dy.
AG, appear and accept notice in the matter for respondents.
2. Heard the learned counsel for the petitioners in respect of the matter.
3. The case of the petitioners in brief is that they are the recorded owners
and in actual possession of a plot of land measuring 27 Kanals, 08

Marlas, comprised under Survey No. 400, 403, 406, 407, 412, 419, 420, 423, 425, 426 and 428 situated at village Baduaab, Tulail, Guriez, District Bandipora. That acting on an administrative approval accorded by the respondent No. 2 for the construction of Toilet Block and Teachers quarters for the Government Higher Secondary School, Baduaab Tulail, the respondent No. 3, 4, & 9 have started raising construction over their aforesaid proprietary land otherwise than in due course of law despite the availability of adjoining state/Kacharari land.

That they submitted a written representation seeking demarcation of their land before proceedings with the proposed construction before the concerned authorities including the respondents but the respondent No. 8, i.e., Tehsildar Tulail in utter breach of his duty has forcibly inducted heavy machinery on to the site and has been adamant to continue the construction in disregard of the law and without addressing their representation. That the respondent No. 8 has not stopped their but has shown his highhandedness in getting some of them illegally detained by misusing his powers.

That no acquisition proceedings in accordance with law have been initiated before interfering with their private proprietary land. That the action of the respondents is thus without authority of law, arbitrary and violative of Articles 14, 21 and 300-A of the Constitution, warranting urgent interference by this Court.

4. The petitioners have accordingly prayed for the issuance of following writs/directions in the matter:-

(a) A writ of mandamus or any other appropriate writ, order or direction, directing the respondents to forthwith stop and desist

from raising any further construction over the petitioners' land comprised in Khasra Nos. 400,403,406,407,412,419,420,423,425,426 and 428 situated at village Baduaab, Tulail, Guriez, District Bandipora, measuring 27 Kanals 8 Marlas.

(b) A writ of mandamus directing the respondents to remove the unauthorized construction and restore vacant, peaceful possession of the subject land to the petitioners.

(c) A writ of mandamus directing the respondents to pay to the petitioners mesne profits/rent/damages for wrongful and unauthorized use and occupation of the suit land from the date of its occupation till the date of restoration of possession or payment of compensation, as the case may be.

(d) A writ/direction upon respondent Nos. 7 & 8 to carry out, through the competent revenue officials, a fresh demarcation of the suit land so as to clearly distinguish the petitioners' proprietary land from the adjoining state/Kahcharai land, and to submit a report thereof before this Court.

5. Learned counsel for the petitioners during his preliminary submissions stated that the respondents have proceeded to start the construction on the proprietary land of the petitioners, in utter breach and violation of the Provisions of the Land Acquisition Law in vogue. They did not address the representation made by the petitioners with the request to demarcate the land first and to initiate acquisition proceedings in respect of their proprietary land, if they need the same. That the action of the respondents is quite arbitrary and violative of the constitutional rights of the petitioners especially guaranteed under Article 300-A of the Constitution. That the respondents have chosen to start the construction of the Toilet Block and Teachers quarters for the Government Higher Secondary School, Baduaab Tulail, Guriez in a quite illegal manner, without showing regard to the rule of law to

prevail. The learned counsel further submitted that in case respondents are not directed to demarcate the land on spot to see whether they are making the construction on the proprietary land of the petitioners or on other *State/ Kahcharai* land, the petitioners shall suffer an irreparable loss.

6. The petitioners have however, admitted that some *State/ Kahcharai* land is available near the School concerned which has been leftover by the respondents.
7. In the facts and circumstances of the case, the Court is of the opinion that the matter can even be disposed of at this threshold stage by passing of appropriate directions which are not likely to prejudice the interests of any of the parties and which instead are meant to be complied with by the respondents out of their statutory obligations.
8. Right to property is a guaranteed constitutional right under Article 300-A of the Constitution of India. This right though not a fundamental right now has the trappings of the fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution. It is well settled that no person can be deprived of his property except in due course of law. The respondents have no authority under law to start or proceed with any sort of construction on the proprietary land of the petitioners without initiating the proceedings for acquisition of the same in accordance with law.
9. It is the case of the petitioners that the respondents have started construction on their proprietary land without having recourse to the acquisition proceedings under law for payment of compensation to them.
10. It is however, submitted by the learned counsel for the respondents

that the Government order No. 224/DDC/DAJUABPR of 2025 dated 27.11.2025, issued by the Office of District Development Commissioner, Bandipora, regarding accord of administrative approval in respect of the subject construction *inter-alia* mentions that executing agency shall be ensure that the “Component of Land Compensation” must form part of the technically vetted DPRs and funds for the said component shall released as part of the project/work.

11. The respondents should know that acquisition proceedings especially in respect of the private proprietary land are meant to be initiated first for passing of award of compensation by the Collector concerned before starting any work thereon. A helpless land owner cannot be left to move from pillar to post for payment of compensation to him, after raising of any construction by the Government.
12. The petitioners are seeking such a prayer which falls within the four corners of the law. They demand that respondents shall conduct a demarcation on spot and if it is found that subject construction is being made on any part of their proprietary land falling under the subject Khasra numbers, then they shall be restrained to do so except first initiating the process for acquisition of the same under law. Raising of any construction by the State functionaries on a private proprietary land without following due course of law is highly unjustified resulting in grave miscarriage of justice.
13. In the backdrop, the instant petition is disposed of with a direction to the respondents that they shall get the demarcation of the land conducted on spot in presence of the petitioners or their representatives within a period of two weeks from the date, copies of

this order are left at their offices. In case it is found that the construction of Toilet Block and residential quarters for the Teachers of Government Higher Secondary School Baduaab Tulail, Bandipora is being made on any part of the proprietary land of the petitioners, the construction shall be stopped forthwith, till formal acquisition proceedings in respect of the said portion of the land are initiated in accordance with law for payment of compensation to them.

14. The writ petition is ***disposed of*** along with connected CM(s).

(Mohd Yousuf Wani)
Judge

SRINAGAR
21.09.2026.
"Abdul Rashid"

<i>Whether the order is speaking;</i>	<i>No.</i>
<i>Whether the order is reportable:</i>	<i>No.</i>