

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

LPA No. 327/2025

Reserved on: 04.05.2026

Pronounced on: 21.05.2026

Uploaded on: 22.05.2026

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

1. Union Territory of J&K through
Commissioner/Secretary to Government,
Revenue Department, Civil Secretariat,
Srinagar/Jammu.
2. Financial Commissioner, Health &
Medical Education Deptt Govt. of J&K
Civil Secretariat, Srinagar/Jammu.
3. Deputy Commissioner, (Collector)
Srinagar.
4. Assistant Commissioner Revenue,
Srinagar. ...Petitioner(s)/Appellant(s)
5. Director Health Services Kashmir,
Srinagar.
6. Commissioner, Srinagar Municipal
Corporation, Srinagar.
7. Additional Deputy Commissioner,
Srinagar.

Through: Mr. Faheem Nisar Shah, Adv.

Vs.

Khawaja Nizam Shah Aged 91 years
S/o Late Khawaja Salam Shah ...Respondent(s)
Naqashbandi
R/2020 Srinagar through its attorney Holder
Omar Khalil Nedou Aged 63 Years
S/o Late Colonel Ghulam Qadir
R/o 1, MA Road Kashmir, Srinagar

Through: Mr. S. F. Qadiri, Sr. Adv. with
Mr. Zamir Abdullah & Mr. Zahir Abdullah, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

J U D G M E N T

Sanjeev Kumar: J

1. This intra-court appeal by the Union Territory of J&K & Ors. arises from an order and judgment dated 20th of May 2025, passed by the learned Single Judge of this Court [“the Writ Court”] in WP (C) No. 2185/2023, titled Khawaja Nizam Shah vs. Union Territory of JK & Ors. The impugned judgment is assailed by the appellants on multiple grounds. However, before we advert to the grounds of challenge urged by Mr. Fahim Shah, learned GA appearing for the appellants, we deem it appropriate to set out background facts leading to the filing of this appeal.

2. The respondent claims to be owner of land measuring 3 Kanals, 7 marlas and 6 ½ Square Feet falling under Khasra No. 100 situate at Mouza Khaniyar, Srinagar [“subject land”]. The respondent claims that in the year 1980, the subject land was forcibly occupied by the appellants through the Department of Road and Building (R&B) Kashmir. The R&B Wing of Public Works Department later handed over the subject land to the Department of Health and Medical Education for construction of hospital namely, “Gousia Hospital, Srinagar”.

3. The respondent approached this court in the year 1986 by way of OWP No. 1140/1986, in which the petitioner prayed for a writ of Mandamus to the appellants not to take the possession of subject land or convert it into a public park except by taking recourse to provisions of Land Acquisition Act. Along with the writ petition, he appended a copy of award dated 24th of January 1972, which pertained to the acquisition of land measuring 12 Kanals, 10 marlas and 18 Square Feet falling in Khasra No.96 to 97 except Khasra No. 100.

4. It was pleaded by the respondent that initially he was under the impression that entire chunk of land including his subject land falling in Khasra No. 100 had been acquired in terms of the award dated 24th of January 1972 supra, but later found that the subject land which was falling in Khasra No. 100 was not subject matter of acquisition initiated by the concerned Collector by issuing a notification under Section 4(1) of the J&K Land Acquisition Act which ultimately culminated into passing of the final award.

5. The respondent claims to have received the entire compensation for the acquired land, but did not get any compensation in respect of the subject land.

6. There was no conclusive documentary evidence placed on record by respondent with the writ petition. Be that as it may, the writ petition was disposed of by the learned Single Bench of this court vide order dated 16th of September 1998 with a direction to the appellants to take notice of a judgment of the Hon'ble Supreme Court rendered in the case of the **State of Himachal Pradesh vs. Darm Dass 1995 (5) SCC 683** and pay compensation to the petitioner if it had not been already paid.

7. It seems that the respondent did not pursue his case for compensation in terms of the judgment of this court dated 16th of September 1998. It was only in the year 2013, i.e., after about 15 years, the respondent made an application to the various authorities seeking compliance of the judgment. The application of the respondent, it seems, came to be processed by the various authorities and departments of the Government. There is *inter se* communications between the Srinagar Municipal Corporation and the Department of Health placed on record by the respondent. It was in the year 2015, the petitioner once again approached the Deputy Commissioner, Srinagar by way of an application. The Deputy Commissioner, Srinagar sought report from Tehsildar concerned vis-à-vis land claimed by the respondent.

8. The Tehsildar, Khanyar in turn sought report from the Naib-Tehsildar, Khanyar, who vide his report bearing No. 1839/NTK dated 13th of January 2015 stated that the land under Khasra No. 100 comprised of only 18 marlas and not 3 Kanals and 19 marlas as claimed by the respondent. The Tehsildar Khanyar submitted his report to the Additional Deputy Commissioner in terms of his Communication dated 26th of February 2015. On the basis of this report, the Assistant Commissioner, (Revenue), Srinagar prepared a report regarding the representation of this respondent. In the report, the Assistant Commissioner (Revenue) disputed the claim of the respondent over the subject land.

9. Feeling aggrieved, the petitioner challenged the Communication of Naib-Tehsildar dated 13th of January 2015, the Communication of Tehsildar, Khanyar dated 26th of February 2015 and the report prepared by Assistant Commissioner dated 24th of October 2016 by filing OWP No. 1338/2016.

10. While the aforesaid petition was pending consideration of this court, the respondent seems to have again pursued the matter with the Office of Deputy Commissioner, Srinagar and ultimately succeeded in persuading the Additional Deputy Commissioner, Srinagar to prepare a fresh report. The Additional Deputy Commissioner, Srinagar, not only favoured the respondent by holding that the subject land as per the report furnished by subordinate Revenue Agency was recorded in the name of the respondent, but it went further to assess a compensation of Rs. 4.00 Crores to be disbursed to the respondent.

11. Having got a favourable report from the Additional Deputy Commissioner, Srinagar, the respondent withdrew OWP No. 1338/2016, which was dismissed as withdrawn by a Bench of this court vide order dated 16th of August 2023.

12. On the basis of fresh report given by the Additional Deputy Commissioner, Srinagar in his favour, the respondent filed WP (C) No. 2185/2023 seeking *inter alia* a direction to the appellants herein to pay a compensation of Rs. 4.00 Crores with respect of the subject land in terms of communication/report of Additional Deputy Commissioner, Srinagar dated 12th of January 2021. In the aforesaid writ petition, the respondent did not array the Department of PWD(R&B) which, as per own admission of the respondent, had taken forceful possession of the subject land. The arrayed respondents *inter alia* included the Financial Commissioner, Health and Medical Education and the Deputy Commissioner, Srinagar.

13. It was the plea taken by the Department of Health and Medical Education that the subject land, on the portion of which the Gousia Hospital was existing, was taken by them on rent from the Department of Public Works and therefore, they had no knowledge or information as to how the Public Works Department had acquired the aforesaid land. There does not seem to be any reply filed by the other respondents.

14. The writ court having considered the rival contention came to the conclusion that once the additional Deputy Commissioner had accepted that the subject land was recorded in the ownership of the respondent and that the same was under occupation of the appellants without any acquisition and payment of compensation, as such, the writ petition was liable to be allowed and disposed of by directing the appellants herein to pay a sum of Rs. 4.00

crores to the respondent along with interest @ 6% on the said amount. The Writ Court took the report of Additional Deputy Commissioner as conclusive evidence of title of the respondent and his entitlement to Rs. 4.00 Crores lump sum compensation.

15. The impugned judgment is assailed by the appellants *inter alia* on the following grounds:

- (1) The writ petition filed in the name of Khawaja Nizam Shah by one Omar Khalil Nedou claiming to be his Attorney Holder was not maintainable. The writ court did not appreciate this aspect of the matter despite the fact that it was elaborately pleaded in the reply affidavit filed by the appellants and vehemently urged at the time of arguments.
- (2) That report of the Additional Deputy Commissioner was in contradiction to the early report of Assistant Commissioner, (Revenue) and therefore, was a managed document to favour the respondent. The Department of R&B who as per respondent, had occupied the subject land forcibly was neither arrayed as a party respondent nor was given any opportunity to be heard in the matter.
- (3) That Additional Deputy Commissioner could not have confirmed the title of the respondent qua the subject land without holding a detailed enquiry into the matter and without affording an opportunity of being heard to all the stakeholders including the Department of R&B.
- (4) That the Additional Deputy Commissioner was not authorized to work out a compensation of Rs. 4.00 crores in respect of the subject land for he was neither the Collector Land Acquisition nor had he initiated any acquisition proceedings under the J&K Land Acquisition Act.

16. *Per contra*, Mr. S. F. Qadiri, learned senior counsel appearing for the respondent would argue that his writ petition was only for seeking the implementation of the report of the Additional Deputy Commissioner dated

12th January 2021 and nothing more and nothing less. Since the report of the Additional Deputy Commissioner dated 12th of January 2021 was not contradicted or objected to by any of the Government departments nor was any objection raised to the fixation of compensation, as such, the Writ Court committed no illegality in directing the appellants herein to adhere to the communication of their officer, i.e., Additional Deputy Commissioner, Srinagar dated 12th of January 2021.

17. Having heard the learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment impugned passed by the writ Court is flawed for more than one reason.

18. With a view to examine a very serious objection taken by the appellants with regard to the competence of Omar Khalil Nedou to file a writ petition on behalf of Khawaja Nizam Shah, we examined the Power of Attorney purportedly executed by Khawaja Nizam Shah in favour of Omar Khalil Nedou on 3rd of September 2013. From perusal of Power of Attorney in its entirety, it clearly comes out that the Attorney was issued by Khawaja Nizam Shah to Omar Khalil Nedou, in the relation to the management of property registered in the name of Khawaja Salam Shah Naqashbani, the father of respondent, situate in Gulmarg. Para 3 of the Power of Attorney deserves to be set-out below:

“3. to represent me before the Administrative/ Executive authorities in a matter/cause including claim for compensation due to payable to me on account of land registered in the name of my late father Khawaja Salam Shah Naqashbani in Gulmarg.”

19. There is no mention of the subject land and its management to be taken by Omar Khalil Nedou. It seems that Mr. Omar Khalil Nedou unauthorizedly and without any authority of law filed petition after petition to claim compensation though he was not so authorized. The writ court did not consider this issue and went on to determine the writ petition on merits. Once it is held that Omar Khalil Nedou had no authority to file a writ petition for and on behalf of Khawaja Nizam Shah, it has to be concluded that Khawaja Nizam Shah never staked any claim on the compensation in respect of the subject land.

20. Turning to the report of the Additional Deputy Commissioner, Srinagar, dated 12th of January 2021, which has become the basis of

judgment passed by the writ court, the aforesaid report of the Additional Deputy Commissioner is flawed for the following reasons:

- (1) that it does not take note of and consider the earlier contrary report of the Assistant Commissioner (Revenue) dated 24th of October 2016 which was called in question by the respondent in OWP No. 1338/2016 which came to be dismissed as withdrawn vide order dated 16th of August 2023.
- (2) that the report/communication dated 12th of January 2021, prepared by the Additional Deputy Commissioner, Srinagar and submitted to the Department of Health and Medical Education, is without the involvement of the Department of R&B. It has all along been the case of the respondent that his land was forcibly taken possession of by the department of R&B and, therefore, it was all the more a reason for the Additional Deputy Commissioner, Srinagar to ascertain the claim of the respondent by putting the Department of R&B on notice.
- (3) that the Additional Deputy Commissioner, Srinagar has erroneously assumed the powers of Collector and has virtually passed the award for payment of compensation of Rs. 4.00 Crores in favour of respondent without initiating process of acquisition under the J&K Land Acquisition Act. To top it all, the Additional Deputy Commissioner, Srinagar has not indicated any yardstick adopted by him to work out the compensation of Rs. 4.00 crores in respect of subject land.

21. For all these reasons, we find merit in this appeal, the same is accordingly allowed. The impugned order dated 20th May 2025 passed by the writ court is set-aside.

22. We however make it clear that the judgment passed by us in this appeal shall not come in the way of Khawaja Nizam Shah to lay a claim for compensation on the subject land by taking appropriate legal remedy by arraying all the necessary parties including the Department of Public Works (R&B). It is for him to establish its title over the subject land and also to prove and demonstrate that the same is under occupation of the appellants.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
21.05.2026
Altaf



Whether approved for reporting? Yes/No