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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8501-05/2005

B.L.WALI & ORS.

..... Petitioners

Through: Petitioner No.1 in person with Ms.
Deepti Gupta, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjeev Narula & Mr. Ajay
Kalra, Advs. for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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19.04.2016

1. The five petitioners claiming to be original residents of Kashmir and forced to migrate out of Kashmir for the situation prevailing there, have filed this petition seeking mandamus to Union of India (UOI) and to the Government of State of Jammu & Kashmir (J&K) to protect their immovable properties at Verinag, Kashmir from being encroached or trespassed upon.

2. Notice of the petition was issued and vide order dated 25th August, 2005 *status quo* was directed to be maintained by the Government of State of J&K with respect to the properties of the petitioners. Vide order dated 21st April, 2006, rule was issued and the interim order made absolute. Vide subsequent order dated 3rd March, 2011, a direction was issued to the Chief Secretary of Government of State of J&K to depute a senior level officer

viz. Divisional Commissioner, District Anantnag, Kashmir to visit the properties of the petitioners and file a status report along with the photographs, particularly reporting whether the properties were free from encroachment. Thereafter, again vide order dated 7th March, 2014 a fresh status report was sought.

3. The counsel for State of J&K has not been appearing for the last few dates and does not appear today also.

4. The counsel for UOI states that the requisite steps have to be taken by the State Government only.

5. Not finding any description in the writ petition of the properties qua which the petition has been filed, query in that regard has been made from the counsel for the petitioner.

6. The counsel for the petitioner has drawn attention to the status report dated 3rd May, 2011 filed by the Deputy Commissioner, Anantnag, Kashmir in this Court along with its annexures at pages 130 to 133 of the paper book and states that the same correctly describes the properties of all the five petitioners and qua which relief is claimed in this petition.

7. Though the counsel for UOI has drawn attention to the judgment dated 29th October, 2004 of this Court in W.P.(C) NO.668/1997 earlier filed by the same petitioners and vide which compensation was directed to be paid to the petitioners but on enquiry whether on payment of such compensation, the title of the petitioners to the properties stands divested from the petitioners into UOI or the State of J&K, states that the petitioners remain the owners of the properties and the compensation was for the loss caused to the superstructure of the properties.

8. Though ordinarily the petition seeking relief with respect to the immovable property in the State of J&K ought to have been filed in the High Court having territorial jurisdiction over the immovable property but since this petition has remained pending in this Court for the last 11 years and under interim orders in this petition, the properties have been ordered to be protected and further in view of the same very reasons for which the petitioners have been forced to leave their immovable properties in Kashmir and take refuge in Delhi and in the consonance of the spirit of the earlier petitions entertained in this Court at the instance of such migrants from Kashmir, I do not deem it now appropriate to oust the petitioners from this Court, on the ground of territorial jurisdiction. The directions to the State of J&K in the past have been conveyed through the Resident Commissioner of Government of State of J&K in Delhi and the final direction if any in this petition can also be so conveyed.

9. Accordingly, the petition is disposed of,

- (I) by making the interim orders in force absolute;
- (II) by further directing the Government of State of Jammu & Kashmir to, every six months, have the properties aforesaid of the petitioners inspected by the Deputy Commissioner, Anantnag, Kashmir and if finds any encroachment thereon, to have the said encroachment removed;
- (III) by directing the Resident Commissioner at Delhi of the Government of State of Jammu & Kashmir to upon the petitioners approaching him, furnish to the petitioners the report of such inspections from time to time;

(IV) by directing the Union of India to use its good offices to ensure compliance of the aforesaid directions by the Government of State of Jammu & Kashmir.

10. Copy of this order be forwarded to Resident Commissioner at Delhi of the Government of State of J&K for compliance.

No costs.

Copy of this order be given *dasti* under the signatures of the Court Master to counsels for petitioners and respondent No.1 UOI.

RAJIV SAHAI ENDLAW, J.

APRIL 19, 2016

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