

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

Case:- OWP No. 1764/2012

**Mohd. Azam
S/o Lt. Mohd. Alam
R/o Village Siari
Tehsil Kalakote District Rajouri**

.....Petitioner(s)

Through: None.

Vs

- 1. State of Jammu & Kashmir through
Chief Secretary, Civil Secretariat, Jammu.**
- 2. Power Development Commissioner,
Civil Secretariat, Jammu.**
- 3. Managing Director,
Jammu & Kashmir Minerals Department, Jammu.**
- 4. Deputy Commissioner, District Rajouri.**
- 5. Collector Land Acquisition, Rajouri.**
- 6. Tehsildar, Tehsil Kalakote.**

.....Respondent(s)

Through: Mr. Ravinder Gupta, AAG for R-1 to 3.
Mrs. Monika Kohli, Sr. AAG for R-4 to 6.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

**ORDER
(19.12.2024)**

- 01.** This writ petition was filed on 31.12.2012 originally by the petitioner, namely, Mohd. Alam who came to expire on 07.04.2017 which resulted in preference of an application CM No. 1118/2019 by applicant-Mohd. Azam claiming himself to be one of the sons of the deceased original petitioner-Mohd. Alam to have succeeded to the estate of the deceased original petitioner-Mohd. Alam on the basis of a purported will said to have been executed by the petitioner in favour of applicant-Mohd. Azam.

- 02.** A perusal of the alleged purported will would show that by virtue of the same, the deceased original petitioner- Mohd. Alam dis-inherited one of his sons, namely, Mohd. Zaman and but not making a testamentary declaration of his property in favour of applicant-Mohd. Azam.
- 03.** Nevertheless, in the application CM No. 1118/2024, applicant-Mohd. Azam claimed to have inherited the estate of deceased father original petitioner-Mohd. Azam claiming that his other brothers have consented in the application being the sole legal heirs of his father.
- 04.** The condonation of delay in filing the application came to take place in terms of an order dated 26.02.2019 and the application for bringing on record the applicant-Mohd. Azam as petitioner came to be allowed in terms of order dated 26.07.2021 and that is how the present writ petition is being pursued by Mohd. Azam.
- 05.** In the petition, the original petitioner claimed the following reliefs:-
- a) **to command the respondent Nos. 1 to 3 to place the indent before the respondent No. 5 for assessment of the compensation as per market value regarding the plot of land measuring 7 kanals falling under survey No. 73 situated at village Sairi, tehsil Kalakote, Rajouri, which has been forcibly, illegally and unauthorisedly been occupied by the respondent Nos. 1 to 3 without the consent of the petitioner and without adhering to the procedure in compliance to the Section (17-A) of the Jammu & Kashmir Land Acquisition Act.**
 - b) **the assessment made by the respondent No. 5 as per market value be paid to the petitioner alongwith 18% interest from the date the land has been occupied by the respondent Nos. 1 to 3 till its realization of final payment to be made to the petitioner.**

- c) the respondent Nos. 1 to 3 be directed not to change the ownership rights of the petitioner regarding the plot of land measuring 17 kanals 12 marlas falling under survey No. 73 in view of the mutation attested by the respondent No. 6 in his favour in a remanded case by the order of the Additional Commissioner, Jammu (With the Powers of Divisional Commissioner, Jammu) and the possession of the land of the petitioner regarding the land which is in his occupation be not disturbed.
- d) to command the respondent Nos. 1 to 3 to surrender the possession regarding the 7 kanals of land falling under survey No. 73 which has illegally, forcibly and unauthorisedly been occupied by the respondent Nos. 1 to 3 by getting the constructed quarters demolished in case the compensation as per market value of the land which is presently existing alongwith 18% interest from the date of occupation till its realization be not paid.

06. The original petitioner-Mohd. Alam having demised meant that the mutation of inheritance *qua* his estate was supposed to have been got attested by his legal representatives/ legal heirs whosoever he or they may be and only on that basis a locus would have accrued to the legal representatives/ legal heirs of the deceased petitioner-Mohd. Alam to pursue this litigation to its logical end by reference to the subject land measuring seven (7) kanals falling under survey No. 73 situated in village Sairi tehsil Kalakote district Rajouri which was alleged to have been forcibly, illegally and unauthorisedly occupied by the Power Development Department (PDD) for which the original writ petitioner intended land acquisition proceedings to be resorted to for the legitimizing the acquisition of his alleged land.

07. Mohd. Azam, the petitioner impleaded in place of original petitioner-Mohd. Alam can be conceded *locus* to pursue this litigation only if he comes up with production of mutation

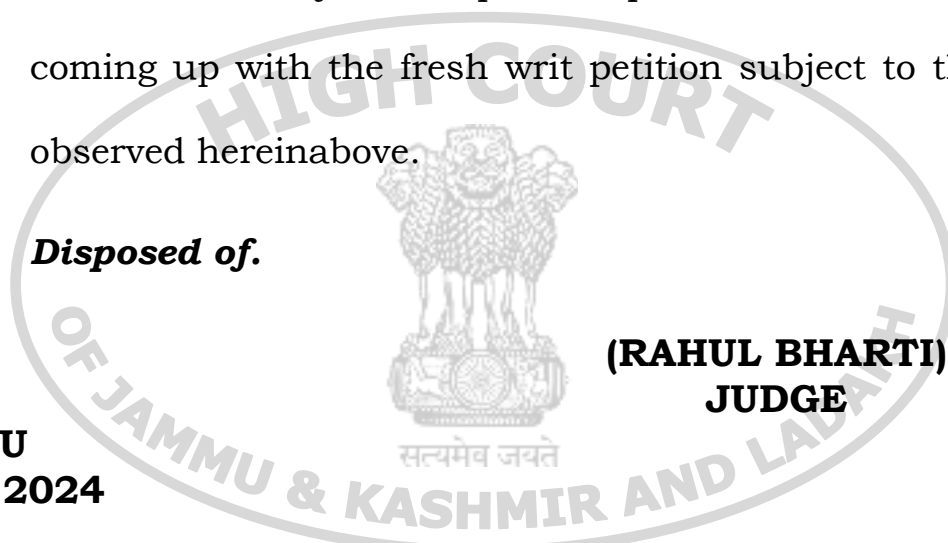
of inheritance of his favour having been attested by the competent revenue officer *qua* the estate forming the subject matter of the writ petition.

08. Therefore, this writ petition is ***disposed of*** with a liberty to the present petitioner-Mohd. Azam S/o late Mohd. Alam to file a fresh writ petition only in the event of having a mutation of inheritance attested in his favour at his disposal *qua* the subject land of the writ petition and, accordingly, the *disposal* of the present petition will not come in the way of the present petitioner-Mohd. Azam in coming up with the fresh writ petition subject to the rider observed hereinabove.

09. ***Disposed of.***

JAMMU
19.12.2024

Bunty



(RAHUL BHARTI)
JUDGE

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No