HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No.332/2017

Pronounced on: 23.12.2025
Uploaded on : 27.12.2025

Shafiq Anjum ....Petitioner(s)

Through:-Mr. Abhirash Sharma, Advocate

V/s

State of Jammu and Kashmir and others

...Respondent(s)

Through:- Ms. Chetna Manhas, Advocate vice
Ms. Monika Kohli, Sr. AAG
Mr. Suneel Malhotra, GA
Ms. Megha Sharma, Advocate

Coram: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT (oral)

1. By way of this writ petition, filed under Article 226 of the Constitution of India, petitioner herein is seeking quashing of Order No.TUDR/OQ/16-17/2951-54 dated 04.03.2017, issued by respondent No.2, whereby respondent No.2 had directed respondent No.3, to visit the spot (Khasra No.1 village Kallar Himitti) and get lifted from the spot, building material owned by the petitioner and seize the same, with a further direction to respondent No.5, to lodge FIR against the petitioner for allegedly encroaching upon the common land of the village/community in violation of Supreme Court judgment in Jagpal Singh v. State of Punjab and others. Besides, seeking a direction to release and restore the material of the petitioner , the petitioner has also

prayed for a direction thereby restraining the respondents from interfering with the building material lying on the land in question.

FACTUAL MATRIX

2. The case of the petitioners, as projected in the writ petition, is that proforma respondent No.6 is owner in possession of land measuring 17/18 marlas recorded in the revenue record as 'Gair Mumkin Talai' i.e. uncultivable pond, which falls in the share of respondent No.6 and is not a common land or gram panchayat land/shamlat land. According to the petitioner, although the land in question is recorded in the revenue record as Gair Mumkin Talai, the same is proprietary land of proforma respondent No.6, which fact is substantiated by the revenue record appended by the petitioner.

3. It is stated that on the authority of respondent No.6, petitioner had store building material viz. iron rods, flat iron, and iron angle etc on the land in question. All of a sudden, respondent No.3, issued impugned notice dated 11.02.2017, alleging therein that the petitioner had dumped huge TMT bars, angles iron, pipes etc illegally on khasra No.1 at village Kaller Himitti, which, according to the official respondents is a common land to be used by inhabitants of the locality/village. Subsequently, impugned order dated 04.03.2017, came to be passed by respondent No.3, without seeking reply or affording any opportunity of being heard and ordered lifting and seizure of the building material stored by the petitioner on the land in question. By virtue of impugned order, it has

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also been ordered that Station House Officer, Police Station, Udhampur shall lodge FIR against the petitioner for encroaching the common land reserved for the common purposes. In the order impugned, it is stated that the land in question is required to be dealt with as per the provisions of common Land Act, 1956 and directions of the Supreme Court given in case titled **Jagpal Singh v. State of Punjab and others**. Aggrieved by the impugned order, petitioner approached this Court by way of present writ petition.

4. *Per contra*, the claim of the petitioner has been opposed by the respondents by filing their reply. In the reply submitted by respondent Nos. 1 to 3, it is stated that as per the revenue record land under Khasra No.1 measuring 18 marlas is recorded in ownership column of Des Raj and others and in cultivation column of Khasra Girdawari as Des Raj as share holder, but the nature of the said land is recorded as Gair Mumkin Talai. Gair Mumkin Parat of land i.e. Gair Mumkin Talab, Gair Mumkin Bowli, GM Nalla, GM Rasta, Gair Mumkin Phat, Gair Mumkin Shamshan Ghat, G.M. Kabristan do not come under the purview of Land Revenue Act. Even though, Gair Mumkin Talai has been found to be filled and leveled on spot, land use of such land cannot be changed for other purposes. It is stated that merely on account of girdawari entry, respondent No.6 is not authorized/entitled to make any change of land use, which is recorded as Gair Mumkin Talai or to enter into any sort of agreement with somebody or using the said land for commercial purposes. Insofar as, applicability of Common Land

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Regulation Act, 1956, it is stated that the area falls within the limit of Municipal Council Udhampur, as such, it does not come under the said Act.

5. In the objections filed by respondent No.4, it is stated that in terms of Section 57 of the J&K Municipal Act, 2000, land in question, which is Gair Mumkin Talab, vests in the Municipal Council and the proprietary right of the said land cannot vest in any individual. It is further stated that the land in question is a common land, to be used in the interest of the community residing in the vicinity. The petitioner is stated to be a trespasser and liable for criminal action under law.

6. On the other hand, respondent No.6, in his objections, has stated that he is the owner in possession of land measuring 17/18 marlas recorded in the revenue record as Gair Mumkin Talai i.e. uncultivable pond, not a village common land or gram Panchayat land/Shamlat land, which fact is apparent from the Khasra girdawari of 1971 till 2016. He has also admitted that the petitioner has stored the building material on the land in question with his consent/authority, as he is the recorded owner of the said land.

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7. Respondent Nos. 7 to 29, who have been impleaded as party respondents in the writ petition vide order dated 07.02.2023, though not filed their objections, have resisted the claim of the petitioner on the ground that they were as well as other inhabitants of Ward No.16 and 17 of Udhampur, were utilizing the land in question as a common land for their common purposes since long. It is stated that the petitioner is

running his business under the name and style of M/s Haroon Traders, in violation of the rules thereby creating noise pollution and causing nuisance to the public in general of the area.

8. Heard learned counsel for the parties and perused the material available on record.

9. Relief claimed by the petition in the writ petition is twofold, to quash the order impugned, whereby respondent No.3 was directed to visit the spot and get lifted the building material owned by the petitioner and seize the same and lodge FIR against the petitioner and to release and restore the material of the petitioner.

10. Insofar as direction with respect to release of the material of the petitioner is concerned, it has been rendered infructuous on account of the fact that the material seized from the petitioner already stands released in his favour. It is so reflected in order dated 18.09.2018, operative portion whereof reads thus:-

> *"Learned counsel for the applicant/petitioner submits that despite order dated 12.05.2018, passed by respondent No.2, the material which belongs to the petitioner had not been released in his favour. On the other hand, Mr. Nanda, learned Sr. AAG submits that in case the material had not been released, same shall be released.*
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> *In view of the aforesaid submissions, IA No.2/2018 is disposed of with a direction to the respondent No.4 to implement the order dated 12.05.2018 passed by the respondent No.2 and release the material seized from the petitioner/applicant, if not already released."*

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11. A bare perusal of the order impugned indicates that the same has been issued by invoking the Common Land Act, 1956 and the directions of the Supreme Court in the case of **Jagpal Singh v. State of Punjab and others, 2011 (11) SCC 396,** duly endorsed by the Government of Jammu & Kashmir vide Cabinet decision dated 19.10.2011. Section 1(4) of the Jammu & Kashmir Common Lands (Regulation) Act, 1956 expressly excludes the applicability of the Act in an area declared as Municipality under the provisions of the Jammu and Kashmir Municipal Act, 2008.

12. Indisputably, the land in question falls within the Municipal area of Udhampur, as such, as is rightly conceded by the respondents in their objections, does not fall within the purview of the Common Land Act, 1956. Insofar, as directions of the Supreme Court in the case of Jagpal Singh v. State of Punjab and others are concerned, same have been issued with respect to Gram Sabha/Gram Panchayat/Poramboke/ Shamlat land. Relevant portion of the judgment reads thus:-

> "Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge

> expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

13. Since directions issued by the Supreme Court are with regard to the common lands and as has been admitted by the respondents, J&K Common Lands (Regulation) Act, 1956 does not apply to the land in question, as such; impugned order passed by invoking the provisions of J&K Common Land Act, 1956 is unsustainable in law and no action against the petitioner should have been taken, as he is not claiming any right or title over the land in question. His only case is that he had stored the material on the land in question under the authority of respondent No.6, who claims to be the owner of the land in question, which also stands reflected in the revenue record relied upon by both the parties i.e. petitioner as well as respondent. Even the Khasra girdawari relied upon by respondent Nos. 7 to 29, indicates that respondent No.6 along with others are owner of the land in question, however, in terms of order dated 17.05.2016, a restriction has been imposed that the land may not be sold.

14. The claim of the petitioner has also been admitted by respondent No.6, who states that the petitioner has stored the material on the land in question on the authority given by him. In view of this, any action, if at

all, is to be taken, that should have been taken against respondent No.6 and not against the petitioner.

15. Regarding plea of learned counsel for the respondent Nos. 1 to 3 that under the Jammu & Kashmir Water Resources (Regulation and Management Act), 2010 the land in question vests in the Government, suffice it to say the record does not reflect any action taken under the said Act, because there is no such entry in the revenue record. If the land in question, falls within the purview of aforesaid Act, official respondents are free to take recourse under the said Act, if permissible. Even, name of Municipal Council, Udhampur is not reflected anywhere in the revenue record produced before this Court.

16. For all what has been said above, the writ petition succeeds and is, accordingly, allowed. Consequently, the impugned order dated 04.03.2017 as against the petitioner is set aside.

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(Moksha Khajuria Kazmi)
Judge

Jammu.
23.12.2025
Vinod.

Whether the order is speaking : Yes
Whether the order is reportable: No

Vinod Kumar
2025.12.24 00:17
I attest to the accuracy and
integrity of this document