HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 705/2017

Reserved on: 01.10.2026
Pronounced on: 22.10.2026.
Uploaded on: 22.10.2026.
Operative part or full judgment - Full

Balwant Raj
S/O Rakha Ram
R/O Gole
Tehsil & District Jammu

...Petitioner(s)

Through: Sr. Adv. O.P.Thakur with
Adv. Anandita Thakur
Adv. Rohit Singh

Vs.

1. **State of J&K** through
Commissioner-cum-Secretary,
Revenue Department,
Civil Secretariat, Srinagar.
2. Financial Commissioner (Revenue)
J&K Govt. Srinagar.
3. Divisional Commissioner, Jammu.
4. Regional Director,
Survey and Land Record, Jammu.
5. Deputy Commissioner, Jammu.
6. Tehsildar, Jammu West,
Gole Gujral, Jammu
7. Jammu Development Authority
through its Vice Chairman,
Jammu.

...Respondent(s)

Through: Sr.AAG Monika Kohli with
Adv. Priyanka Bhat for R-1 to 6.
Adv. Sachin Dogra for R-7.
Mr. Sachin Sharma, Adv for interveners.

CORAM: HON'BLE MR. JUSTICE M. A.CHOWDHARY, JUDGE

JUDGMENT

1. The petitioner has invoked the writ jurisdiction of this Court seeking the following directions unto the respondents :-

(i) *A writ of certiorari to quash the demarcation report No. TJW/OQ/2016-17/363 dated 2-2-2017 submitted by the demarcation team to respondent No. 4;*

(ii) *A writ of certiorari to quash the order No. DCJ/PS/2017/1141-47 dated 16-2-2017 issued by respondent No. 5 whereby the respondent No. 6 has been directed to serve the eviction notice upon the petitioner;*

(iii) *A writ of certiorari to quash the eviction notice No.TJW/OQ/2016-17/662-664 dated 28-2-2017 issued by respondent No. 6 whereby the petitioner was ordered to vacate to state land as being unconstitutional, illegal, void ab initio besides being violative of principle of natural justice;*

(iv) *A further writ of mandamus commanding the respondents 3, 5 and 6 who are the members of the Committee constituted under the J&K State Land (Vesting of Ownership to the Occupants) Act, 2001 and Rules framed there-under, to determine the price of the land in possession of the petitioner under the said Act and confer the ownership rights in favour of the petitioner; and*

(v) *A writ of mandamus and prohibition restraining or dispossessing the petitioner in any manner in respect of the land measuring 19 kanals 4 marlas*

falling under khasra No. 746 min. situated at village Gole, Tehsil and District Jammu.

2. The case set up by the petitioner is that he belongs to a Scheduled Caste community and was a landless person; that the petitioner and his predecessors have been in continuous and uninterrupted possession of the State land measuring 32 *kanals* 4 marlas falling under khasra No.746 min. situated at village Gole, Tehsil and District Jammu; that the petitioner has been cultivating the said land since the year 1965-66 and had invested huge amount thereon; that the land in question was being used by him for agricultural purposes and his possession was open and continuous for several decades; that having regard to his long-standing possession and cultivation of the land the petitioner approached the Minister concerned seeking regularization of his possession over the said land; that his case was favourably considered and the same was approved by the Financial Commissioner (Revenue) in the year 1998; that the said approval was granted much prior to the enactment of the Jammu & Kashmir State Lands (Vesting of Ownership to the Occupants) Act, 2001; that on the strength of the said approval as well as his long-standing possession the petitioner continued to remain in possession and cultivation of the land; that subsequently the Legislature enacted the Jammu &

Kashmir State Lands (Vesting of Ownership to the Occupants) Act, 2001 popularly known as the 'Roshni Act'; that the said Act was enacted with the object of providing for vesting of ownership rights in occupants of State land, *inter alia*, for generating funds to finance power projects in the erstwhile State of Jammu & Kashmir; that the statutory scheme contemplated conversion of qualifying occupancy over State land into freehold/ownership rights subject to fulfillment of the conditions prescribed under the Act and payment of the price determined, in accordance with law.

3. Pursuant to notice, respondent nos. 1 to 6, filed their reply, controverting the assertions of the petitioner, pleaded that the writ petition is not maintainable as none of the legal, fundamental or statutory right of the petitioner has been infringed; that petitioner has illegally encroached upon 15 kanal of land and respondents have issued the notice to petitioner to vacate the same; that this court has declared the Roshni act as ultra vires and struck down the same and so notices have rightly been issued to the petitioner asking him to vacate the said land, which is in his illegal possession; that the anti-encroachment drive envisaged by the respondents would be strictly in accordance with the rules. Lastly, it is prayed that the writ petition be dismissed as non maintainable.

Respondent no.7, in its separate reply pleaded that the land in question got transferred to JDA way-back in the year 1973 and, therefore, writ petition is liable to be dismissed out-rightly, in view of the fact that the land, in question, belongs to the Jammu Development Authority, where the State (Vesting of Ownership Rights to the Occupants) Act, 2001 is not applicable; that the petitioners already stood evicted from the land in question, in view of the directions given by this court in WPPIL No. 19/2011 titled 'Prof. S K Bhalla V. State of J&K & Ors', and the said land got developed into colonies and subsequently, got allotted to the different persons as after adopting due course of law. Lastly, it is prayed that writ petition be dismissed being misconceived.

4. Learned Senior Counsel appearing for the petitioner, while arguing the matter at length, pleads that the petitioner, in view of his continuous possession and cultivation of the land since the year 1965-66, as also the earlier approval granted by the Financial Commissioner (Revenue) in the year 1998, was entitled to have his possession considered for regularization/vesting of ownership rights in accordance with the applicable statutory regime; that notwithstanding the petitioner's long-standing possession and the aforesaid approval, proceedings

came to be initiated against him pursuant to directions issued in PIL No.19/2011; that a show-cause notice was issued by the respondent no.6-Tehsildar Jammu West, to which the petitioner submitted his reply, specifically bringing on record his long possession, cultivation, his status as a landless member of the Scheduled Caste community and, more importantly, the approval granted by the Financial Commissioner (Revenue) in the year 1998; that the petitioner submits that instead of considering the reply and the documents relied upon by him, the respondents proceeded to conduct demarcation of the land and thereafter passed order No. DCJ/PS/2017/1141-47 dated 16.02.2017, directing respondent No.6 to issue an eviction notice; that consequently respondent No.6 issued eviction notice No. TJW/OQ/2016-17/662-664 dated 28.02.2017 directing the petitioner to vacate the land in question; that the said eviction notice was issued without considering the reply submitted by the petitioner to the earlier show-cause notice and without examining the effect of the approval granted by the Financial Commissioner (Revenue) in 1998; that an application was moved by the applicant in PIL No.19/2011 and vide order dated 23.03.2017 the PIL Bench directed the applicant to avail the appropriate remedy; that the petitioner has

accordingly approached this Court by way of the present writ petition.

5. Learned Sr.AAG appearing for the respondents, ex-adverso, contended that the petitioner has illegally and without authority of law encroached upon the land in question and the respondents have issued the notice to the petitioner legally, to vacate the State land encroached upon by him; that this Court has already declared the 'Roshni Act' as ultra-vires and struck down the said Act enacted by the State Legislature, as such, the State land encroached upon by any person(s) shall have to vacate the said land; that as per the law the notices had been rightly issued to the petitioner for vacating from the State land which is in his illegal possession; that the respondents have not taken any such step so as to constitute any illegality, warranting interference; that the respondents are carrying out their encroachment drive in accordance with the rules and the petitioner, who is also in illegal possession of the land in question, has to vacate from the said land; that the present writ petition of petitioner is unsustainable in the eyes of law and is liable for dismissal.

6. Learned counsel appearing for respondent no.7-JDA, while reiterating the averments made in the objections filed on behalf of respondent-JDA, submitted that petitioner has concealed material fact from this court

with regard to his filing an application CMA No. 131/2014 followed by CMA No. 291/2014 in WPPIL No. 19/2011 titled 'Prof. S K Bhalla V. State of J&K & Ors' in respect of the same subject matter, where no relief has been granted in favour of petitioner till date, rather respondent-JDA was directed to proceed further against the petitioners in accordance with law; that in compliance to directions issued by this court from time to time in the matter, the JDA proceeded further in the matter, got the land in question retrieved from illegal encroachers including the petitioner herein and properly fenced it and later colony was developed over the said land and plotted allotted through draw of lots; that the writ petition is liable to be dismissed in view of fact that land measuring 784 kanals and 17 marlas falling under Khasra No. 746 situated at Gole, Tehsil Jammu has been transferred to the JDA and handed over after due demarcation by the revenue authority and in accordance with Tatima Shajra; that due to not applicability of Roshni Act to the JDA, the writ petition is liable to be dismissed. Lastly, it is prayed that writ petition be dismissed.

7. Heard the rival submissions of learned counsel for the parties, perused the material available on record and considered the matter, in its entirety.

8. One aspect which requires meticulous consideration is the petitioner's assertion that he has been in possession and cultivation of the land in question since 1965-66. Thus, according to the petitioner, his possession does not commence with the 'Roshni Act', 2001 nor was his claim founded exclusively upon the said enactment. His case is that he had been cultivating the land for more than three decades even before the enactment of the 'Roshni Act' and that his possession had, in fact, been considered by the Government in the year 1998 when the Financial Commissioner (Revenue) allegedly approved his request for regularization. The length of possession of the land in question, by itself, may not confer title upon an occupant of State land, nevertheless, where an occupant asserts a specific governmental order or approval in his favour and claims to have remained in possession for several decades on the basis thereof, such material cannot be brushed aside without examination by the competent authority. The petitioner is not merely asserting a claim founded upon long possession, but he also relies upon a specific administrative approval allegedly granted in 1998 coupled with his assertion of cultivation since 1965-66. The legal effect and operative character of that approval necessarily requires examination from the original record.

9. The Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Act, 2001 was enacted on 09.11.2001 and became popularly known as the 'Roshni Act'. Its stated object was to provide for vesting of ownership rights in occupants of the State land, for the purpose of generating funds to finance Power Projects in the State. The statutory scheme contemplated consideration of eligible occupants for conversion of their occupancy into freehold rights, subject to the conditions prescribed under the Act and payment of the price determined in the prescribed manner. The enactment, therefore, constituted a statutory framework for dealing with long-standing occupation of the State land. The petitioner seeks to place his claim in the context of that statutory regime as well asserting that his possession and cultivation since 1965-66 made him a long-standing occupant of the said land. However, subsequent judicial developments have considerably altered the legal position. In **Prof. S.K. Bhalla v. State of J&K & Ors. (PIL No.19/2011)**, decided on **09.10.2020**, the Division Bench declared the Jammu & Kashmir State Lands (Vesting of Ownership to the Occupants) Act, 2001, as amended from time to time, unconstitutional/illegal being *ultra vires* the Constitution of State of J&K and void *ab initio*. The Court held that there could be no legal divesting of State

land and vesting thereof in private occupants under the said enactment. Consequently, whatever may have been the position during the period when the 'Roshni Act' was in force, no mandamus can now be issued directing the respondents to confer proprietary rights upon the petitioner, merely under the enactment (supra).

10. A claim which has the 'Roshni Act' as its sole legal foundation cannot survive in view of the declaration of law noticed above as ultra vires. This position has also been reiterated in subsequent decisions of this Court. The said conclusion, however, does not by itself answer the petitioner's separate contention that his possession was considered and allegedly approved by the Financial Commissioner (Revenue) in 1998, i.e. before the enactment of the 'Roshni Act'. The alleged approval of the Financial Commissioner (Revenue) assumes considerable significance because the petitioner asserts that it preceded the 'Roshni Act' by several years. If the original record establishes that the competent authority had, in fact, passed an order approving regularization of the petitioner's possession, the legal consequences of such order have to be examined independently and cannot be determined merely by referring to the subsequent invalidation of the 'Roshni Act'.

11. This Court is conscious that mere administrative approval for regularization does not necessarily amount

to transfer of title unless the applicable law and the terms of the order so provide. Equally, the respondents cannot be permitted to ignore such an order altogether while proceeding to dispossess the petitioner. The competent authority was, therefore, required to examine the original record relating to the alleged 1998 approval, ascertain whether the same was actually passed by the Financial Commissioner (Revenue), determine its nature and scope, and thereafter consider whether any right or protection flowed from the said order.

12. The requirement of consideration of the petitioner's defense assumes significance because the petitioner had admittedly been called upon to explain his position and had submitted a reply. His case was not simply that he was in unauthorized possession. He relied upon cultivation and possession since the year 1965; his status as a landless person belonging to a Scheduled Caste; the alleged approval of regularization by the Financial Commissioner (Revenue) in 1998; and his subsequent claim under the statutory framework governing State land.

13. These were matters which required consideration before an order resulting in his dispossession could be passed. In **State of Orissa v. Dr. (Miss) Binapani Dei** reported as **AIR 1967 SC 1269**, the Supreme Court held that an administrative order involving civil consequences must

be made consistently with the principles of natural justice. Likewise, the principles governing a meaningful show-cause notice and consideration of the defense of the affected person have been reiterated by the Supreme Court in **Gorkha Security Services v. Government of NCT of Delhi** reported as **(2014) 9 SCC 105**.

14. In the present case, the petitioner's specific grievance is that the Tehsildar, Jammu West, while issuing the eviction notice dated 28.02.2017, did not advert to the reply submitted by him and did not deal with the material relating to the 1998 approval by the Financial Commissioner (Revenue). If the record bears out this contention, the impugned eviction notice cannot be sustained, for the opportunity afforded to the petitioner would then have been reduced to an empty formality.

15. It needs to be clarified that the Court is not holding that long possession or cultivation of the State land since 1965-66, by itself, creates a proprietary right in favour of the petitioner. The law does not recognize adverse possession against the State merely on the basis of a prolonged occupation where the statutory requirements are otherwise not fulfilled. The State is entitled to protect its land and remove unauthorized encroachments in accordance with law. At the same time, the State must exercise that power in a fair and lawful manner. Where the occupant relies upon a

governmental order passed prior to the 'Roshni Act' and claims to have cultivated the land for several decades, the authority must first determine whether such order exists and what legal consequences flow from it.

16. In view of the aforesaid discussion, the petitioner's prayer for a direction to confer ownership upon him under the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Act, 2001, **cannot be granted**. The said enactment has been declared unconstitutional/illegal being *ultra vires* the Constitution of State of J&K and void *ab initio* and, therefore, cannot constitute the present legal foundation for conferment of ownership rights. However, the petitioner's case cannot be rejected merely by referring to the invalidity of the 'Roshni Act' because the petitioner asserts an independent factual and legal basis for his possession, namely, his cultivation of the land since the year 1965-66 and the alleged approval of regularization by the Financial Commissioner (Revenue) in 1998.

17. The alleged 1998 approval, if found to exist, predates the 'Roshni Act' by several years, requires an independent examination. This Court does not, at this stage, pronounce upon its validity, enforceability or the precise rights flowing therefrom. The respondents shall be well within their right accordingly to obtain and

examine the original record concerning the alleged approval of the Financial Commissioner (Revenue) of 1998 and determine the nature and legal effect thereof. The respondents shall also take into consideration the petitioner's assertion that he has been cultivating the land in question since 1965-66, the reply submitted by him to the show-cause notice, the revenue record concerning Khasra No.746-min and all other relevant documents produced by him. The order No. DCJ/PS/2017/1141-47 dated 16.02.2017 shall not be acted upon for the purpose of dispossession without undertaking the aforesaid exercise. The consequential impugned eviction Notice No. TJW/OQ/2016-17/662-664 dated 28.02.2017, having been issued without demonstrable consideration of the aforesaid defense, is accordingly **quashed**.

18. The competent authority shall, after affording the petitioner an effective opportunity of hearing, pass a fresh, reasoned and speaking order dealing specifically with the petitioner's claim of cultivation since 1965-66; the revenue record relating to the land in question; the claimed approval for regularization, granted by the Financial Commissioner (Revenue) in the year 1998; the reply submitted by the petitioner to the show-cause notice; the legal status of the land; and the petitioner's claim, if any, arising independent of the 'Roshni Act',

coupled with his claim of being landless and also a member of a Scheduled Caste.

19. It is made clear that this Court has not declared the petitioner to be the owner of the land in question and has not held that his long possession or cultivation, by itself, confers title upon him. It is equally made clear that the petitioner shall not claim ownership merely on the basis of the 'Roshni Act', 2001, in view of the declaration that the said enactment is unconstitutional and void *ab initio*. The competent authority shall complete the said exercise within a period of six months from the date a copy of this judgment is served upon it. Till such exercise is completed and a fresh order is passed in accordance with law, the petitioner shall not be dispossessed from the land in question pursuant to the impugned eviction notice dated 28.02.2017.

20. The writ petition is, accordingly, disposed of as **partly allowed,** in the aforesaid terms.

(M. A. CHOWDHARY)
JUDGE

Jammu
22.10.2026
Muzamil/ Secy.

Whether the order is reportable: Yes / No

Raj Kumar
2026.10.23 17:19
I attest to the accuracy and
integrity of this document