

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

Reserved on: 03.07.2025
Pronounced on: 11.07.2025

LPA No. 55/2024

1. Mushtaq Ahmad Jan, Age 73 Years
 2. Khurshid Ahmad Jan, Age 76 Years
Sons of Namdaar Jan
 3. Farooq Ahmad Jan, Age 65 Years
 4. Khalid Ahmad Jan, Age 69 years
 5. Irshad Ahmad Jan, Age 59 Years
 6. Zaffar Ahmad Jan, Age 53 years Sons of
Ghulam Mohammad Jan
 7. Mustaseen Yaseen Jan, Age 51 Years
S/o Mohammad Yaseen Jan
 8. Aadil Ahmad Jan, Age 44 Years
 9. Sameer Ahmad Jan, Age 46 Years
Sons of Late Bashir Ahmad Jan
- All residents of Kaloosa, Bandipora (Appellant
No.7 at present resident of Shaltang, Srinagar) ...Petitioner(s)/Appellant(s)

Through: Mr. Shafqat Nazir, Adv.

Versus

1. Govt. of J&K through Commissioner/
Secretary to Government, Rural
Development and Panchayati Raj Department,
Civil Secretariat Srinagar;
2. Director, Rural Development and Panchayati
Raj Department Kashmir, Srinagar;
3. Deputy Commissioner/ District
Collector Bandipora;
4. Assistant Commissioner Development,
Bandipora;
5. Block Development Officer,
Bandipora. ...Respondent(s)

Through: Mr. Mohd Younus Hafiz, AC vice
Mr. Abdul Rashid Malik, Sr. AAG

CORAM:

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

J U D G M E N T

Per Sanjeev Kumar

1. The appellants nine in number have filed this intra-court appeal to throw challenge to an order and judgment dated 6th December 2023 ["impugned judgment"] passed by the learned Single Judge of this Court [the "Writ Court"] in WP (C) No. 2300/2022 titled Mushtaq Ahmad Jan & Ors. vs. Govt. of JK & Ors. whereby the writ petition filed by the appellants to direct the respondents to pay compensation for land measuring 8 Kanals and 13 marlas falling under Survey Nos. 945/946 ["subject land"] situate at Muslimabad, Kaloosa Nathpora, Bandipora has been dismissed on the ground of delay and laches.

2. The impugned judgment is assailed by the appellants primarily on the ground that in view of the clear position of law laid down by the Hon'ble Supreme Court in the case of **Vidya Devi vs. State of Himachal Pradesh & Ors. reported in 2020(2) SCC 569**, the Writ Court ought not to have dismissed the writ petition on the ground of unexplained delay in invoking the writ jurisdiction. It is argued that the State which has forcibly occupied the land of a citizen without following the due process of law can neither plead adverse possession nor can set-up delay and laches to deny the right of such citizen to be compensated for deprivation of his land.

3. Before we proceed to appreciate the arguments of Mr. Shafqat Nazir, learned counsel for the appellants and the learned AAG appearing for the respondents, we deem it appropriate to briefly state few relevant facts.

4. One Namdaar Jan, the predecessor-in-interest of the appellants was owner in possession of subject land which, on the death of Namdaar Jan, devolved upon them. The mutation of inheritance bearing No. 358 stands testimony of this fact. The subject land, as per the revenue record, continues to be reflected in the ownership of appellants though under occupation/physical possession of the Department of Rural Development.

This is the position in the revenue records even as on date. It is not in dispute that the subject land was taken possession of by the Rural Development somewhere prior to 1958-59 for construction of Block building in Bandipora.

5. There is also no dispute with regard to the fact that the said land belonging to the Predecessor-in-interest of the appellants was taken possession of by the respondents for construction of Block building without following any due process of law and without payment of any compensation. Ever since the aforesaid land is in possession of the Rural Development Department and the building housing the Block Development Office exists on spot.

6. Late Namdaar Jan who was owner in the year 1958-59 did not agitate the matter with regard to the illegal possession of the Rural Development Department over his land nor did he lay a claim for compensation before any authority during his lifetime. It is only in the year 2013, the appellants approached the Deputy Commissioner, Bandipora by way of a written representation seeking compensation of the subject land under the occupation of the Rural Development Department. The representation came to be processed in the Office of Deputy Commissioner, Bandipora, who vide its communication dated 02.01.2017 called upon the Assistant Commissioner, Development, Bandipora to take up the matter with the Director, Rural Development Department, Kashmir for release of land compensation to the land owners under norms.

7. The matter was taken up by Assistant Commissioner, Development with the Director, Rural Development Department, Kashmir vide communication dated 09.01.2017. The Assistant Commissioner, Rural Development Department while enclosing the relevant documents showing the proprietorship of the appellants in respect of the subject land also made a request to the Director, for release of adequate funds to pay compensation in the matter. The communication of the Assistant Commissioner, Development, Bandipora was forwarded by the Director, Rural Development Department, Kashmir to the Administrative Department of Rural Development and Panchayati Raj, vide communication dated 21st November 2017. The Administrative Department took cognizance of the

communication of the Assistant Commissioner, Development, Bandipora and asked the Director. Rural Development Department to furnish reply to the following three queries:

1. When was the office constructed and since when has the land been under the possession of Rural Development Department.
2. Was any element of donation involved. How was the construction allowed in the first place without acquisition.
3. What is the status as per Revenue record.

8. The Assistant Commissioner, Development, Bandipora conveyed to the Administrative Department the point-wise reply which is contained in its communication dated 16th December 2019. The para-wise reply reads thus:

1. Office building of Block Bandipora has been constructed prior to 1958-59 since then the land is under possession of the department (RDD) as per his letter No. BB/Pyt/2018-19/3795-96 dated 06.12.2018.
2. Records pertaining to land under possession may be available in ACD office Baramulla as the Administrative Control was within the ambit of ACD Baramulla.
3. Land under possession of the Block has been taken prior to 1958-59, however the land is under possession of the department and the status shown in the Girdawari as per 1968-69 as Maqboozi Makhami Dehat Sudhar. It was also intimated by the Assistant Commissioner, Development, Baramulla that with regard to point No. 2, the matter was also taken up with Assistant Commissioner, Development, Baramulla who has intimated that there is no record available with regard to the possession of the subject land.

9. From the aforesaid narration, it is abundantly established on facts that subject land belongs to the appellants and the same was taken in possession by the Rural Development Department prior to 1958-59 and since then the land has been under actual and physical possession of the Department. There is also no whisper in the aforesaid communications written by different authorities for processing the request of the appellants for payment of

compensation to the extent that subject land was ever donated or voluntarily given by the predecessor-in-interest of the appellants to the Rural Development Department for construction of its office of Block Development Officer.

10. Be that as it may, in the background of aforesaid facts and having been denied the compensation by the respondents, the appellants filed WP (C) No. 2300/2022 before this Court seeking *inter alia* a direction to the respondents to formally acquire the subject land under land acquisition law and pay them compensation at market rates. The appellants also prayed in the writ petition that major portion of the subject land which is not in actual use of the Department may be returned to them.

11. The writ petition was contested by the respondents. Apart from the plea of delay and laches in approaching the Writ Court, the respondents also took the plea that the subject land was voluntarily given/donated by the predecessor-in-interest of the appellants and, therefore, the respondents are not obliged to pay any compensation.

12. The matter was considered by the Writ Court and in terms of the judgment impugned, the writ petition was dismissed being barred by delay and laches. Relying upon a couple of judgments of the Hon'ble Supreme Court, the Writ Court came to the conclusion that a petition filed more than 62 years after the subject land was taken possession of by the respondents was hopelessly time barred and hit by delay and laches. On this sole ground, the appellants have been non-suited by the Writ Court.

13. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Writ Court runs contrary to the view taken by the Hon'ble Supreme Court in the case of **Vidya Devi** supra. Under somewhat similar circumstances, a case of one Amina Begum was considered by a Division Bench of this Court in LPA No. 105/2019 titled **Amina Begum vs. State of JK & Ors.** The Division Bench relying upon the judgment of the Hon'ble Supreme Court in **Vidya Devi** and the other one titled **State of UP & Ors. vs. Manohar** reported in **AIR 2005 SC 488** rejected the similar plea of delay and laches put forth by the Union Territory of J&K in the aforesaid case. Paragraphs

12.1 to 12.12 of **Vidya Devi** are worthy taking note of and are thus set-out below:-

“12.1. The Appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution. Article 31 guaranteed the right to private property which could not be deprived without due process of law and upon just and fair compensation.

12.2. The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right in a welfare State, and a Constitutional right under Article 300 A of the Constitution. Article 300 A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300 A, can be inferred in that Article.

12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution.

Reliance is placed on the judgment in *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai*⁴, wherein this Court held that: (SCC p.634, para 6)

“6. ... Having regard to the provisions contained in Article 300A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.”

(emphasis supplied)

12.4. In *N. Padmamma v. S. Ramakrishna Reddy*, this Court held that: (SCC p.526, para 21)

“21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law.

Article 300A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300A of the Constitution of India, must be strictly construed.”

(emphasis supplied)

12.5. In Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P.& Ors. this Court recognized the right to property as a basic human right in the following words (SCC p.379, para 30)

“30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed, the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists.” (emphasis supplied)

12.6. In Jilubhai Nanbhai Khachar v. State of Gujarat, this Court held as follows: (SCC p.627, para 48)

“48. ...In other words, Article 300A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300A. In other words, if there is no law, there is no deprivation.” (emphasis supplied)

12.7. In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

12.8. The contention of the State that the Appellant or her predecessors had “orally” consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the Appellant of her property by the State.

12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.*⁸ wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in *State of Haryana v. Mukesh Kumar* held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multifaceted dimension.

12.11. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to “adverse” possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.

12.12. The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be

exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.”

14. From reading of the extracted portion of the judgment rendered in **Vidya Devi**, it is abundantly clear that a legal position on the subject is fairly well settled. The State being a welfare State cannot be permitted to raise the plea of adverse possession over the property of its citizen occupied forcibly without following due process of law. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to denude its owner of his right quo the property. The plea of delay and laches cannot be raised in case of a continuing cause of action. So long as State remains in unauthorized possession of landed property of its citizens taken possession of by it without following due process of law, the cause of action to seek restoration of possession or compensation in lieu thereof would arise every-day. The Constitutional Court exercising its writ jurisdiction may also ignore the delay if the circumstances of the case shock the judicial conscious of the Court.

15. Before we advert to the factual scenario of the case, we deem it appropriate to set out observation of the Hon'ble Supreme Court in the case of **Manohar** supra hereinbelow:-

“We are satisfied that the case projected before the Court by the appellants is utterly untenable and not worthy of emanating from any State which professes the least regard to being a welfare State. When we pointed out to the learned counsel that at this stage at least, the State should be gracious enough to accept its mistake and promptly pay the compensation to the respondent, the State has taken an intractable attitude and persisted in opposing what appears to be a just and reasonable claim of the respondent. Ours is a constitutional democracy and the rights available to the citizens are declared by the constitution. Although article 19(1) (f) was deleted by the 44th amendment to the Constitution. Article 300 A has been placed in the Constitution.”

16. When we examine the case, which was set up by the appellants before the Writ Court, in light of the legal position adumbrated hereinabove, we clearly find that in the instant case, the subject property belonging to predecessor-in-interest of the appellants was taken into forcible possession by the State in the year 1958-59 when right to hold a property was a fundamental right guaranteed to the citizens of this country. Even after the Constitution (Forty Fourth Amendment) Act 1978, whereby Right to Property ceased to be a fundamental right, the right continued to be a human right in a welfare State and a Constitutional right under Article 300-A of the Constitution of India. The forcible dispossession of a person of his private property without following due process of law prior to Forty Fourth Amendment, was violative of fundamental right and, thereafter, violative of a human right as also a constitutional right under Article 300-A of the Constitution. The fundamental right guaranteed to a citizen cannot be said to have been waived by a citizen for remaining silent for long time more particularly when the State has failed in its constitutional obligation to follow the process of land acquisition before taking over the private property of a citizen.

17. A specious plea sought to be raised before us which was also raised before the Writ Court that the subject land was voluntarily given/donated by the predecessor-in-interest of the appellants and, therefore, the appellants are estopped by their conduct and acquiescence to claim compensation of the land donated by their ancestors.

18. We have examined this contention of learned counsel for the appellants in light of the material available on record.

19. We have referred to the several inter and intra departmental communications in the factual narration, a bare perusal whereof, would clearly indicate that this was not the case of the respondents any time before filing of reply-affidavit before the Writ Court that the subject land in possession of the respondent-department was voluntarily given/donated by the ancestor of the appellants.

20. The Assistant Commissioner, Development who has taken this plea in the affidavit does not support his bald assertion by reference to any record in the office. Admittedly, the Assistant Commissioner, Development who filed

the reply affidavit before the Writ Court was not the officer incharge of the Rural Development Department, Bandipora in the year 1958-59. In the absence of any record maintained in the office of respondents, an oral plea by a person who was not privy to what happened in the year 1958-59 is worthy of outright rejection. It needs to be said that even in the case of **Vidya Devi**, a similar plea was taken by the State of Himachal Pradesh that predecessors of the appellants before the Hon'ble Supreme Court had orally consented to the acquisition, but the Hon'ble Supreme Court rejected the same terming it as a case of lack of authority and legal sanction in compulsorily divesting the appellants of her property by the State.

21. The plea of the donation of subject matter is a plea of fact which needs to be proved by reference to evidence whether documentary or oral. The respondents seem to have presumed the donation of the subject land on the ground that the predecessor-in-interest of the appellants during his lifetime and, thereafter, appellants for pretty long time did not dispute the possession of the respondents by approaching them for payment of compensation. It needs no emphasis that the presumption cannot take place of a proof. The appellants have clearly denied that their ancestors ever donated the land and we find truth in the submissions made by the appellants. We see no reason or justification to donate 8 kanals and 13 marlas of land to the State free of cost. Possibly, the predecessor-in-interest of the appellants was allowed to part with the subject land on the promise that his case for compensation would be taken up by the higher authorities, however after taking over the possession and constructing the building of Block Development Office, nobody processed the case for compensation.

22. Be that as it may, the fact remains that the appellants are entitled to be compensated for deprivation of their property. The judgment of the Writ Court dismissing the petition of the appellants and denying them the compensation on the ground of delay and laches is not sustainable in law.

23. In view of aforesaid discussion, this appeal is **allowed** and the impugned judgment passed by the Writ Court is set-aside. A direction is given to the respondents to immediately and forthwith initiate the process of acquisition in accordance with 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,

2013’ (the “Act of 2013”) and determine the compensation payable to the owners of the subject land under possession of the Rural Development Department of the Government of J&K. The process shall be initiated within a period of four weeks from the date a copy of this judgment is served upon the respondents and shall be concluded as per the timeline given in the Act of 2013.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
11.07.2025
Altaf



Whether approved for reporting? Yes