

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

Case No. LPAOW No. 68/2018
c/w LPAOW No. 116/2018,
& LPAOW No. 118/2018

Reserved on: 16.10.2025

Pronounced on: 11.11.2025

Uploaded on: 11.11.2025

Whether the operative part or
full judgment is pronounced

Ghulam Rasool Mistri

.....Petitioner(s)

Through: Mr. Syed Mohtasim, Advocate &
Saqib Fayaz Khan, Advocate vice
Mr. Syed Manzoor, Advocate

Vs

State of J&K and ors.

..... Respondent(s)

Through: Mr. Bikramandeep Singh, Dy. A.G for R-1
to 7
Mr. M. Y Bhat, Sr. Advocate with
Mr. Hamja Prince, Advocate for R-8 & 9

**CORAM: HON'BLE MRS.JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE**

(JUDGMENT)

Shahzad Azeem-J

1. These *intra* Court Appeals have been directed against the common judgment dated, July 24, 2018 passed by the learned Single Judge ("**the writ Court**") in OWP No. 809/2013

titled Ghulam Rasool Mistri Vs. State of J&K and ors; OWP No. 1784/2012 titled Ghulam Rasool Mistri Vs. State of J&K and ors; and OWP No. 1166/2016 titled Srinagar Municipal Corporation Vs. Gulla Sheikh and ors., respectively. The writ Court, vide impugned judgment has dismissed the writ petitions being; OWP Nos. 809/2013 & 1784/2012, whereas, OWP No. 1166/2016 was allowed, thereby set aside the order dated 07.07.2015 passed by the Financial Commissioner in File No. 3/FC-AP, titled *Gul Sheikh and others vs. Assistant Commissioner (Revenue), Srinagar and another*.

2. At the outset, it is sine qua non to note that by virtue of the judgment under challenge four writ petitions came to be adjudicated by way of common judgment dated, July 24, 2018, however, the appeal bearing LPAOW No. 92/2018, wherein one of the four writ petitions bearing OWP No. 1536/2012 titled *Abdul Hamid Dandroo and others v. State of J&K and others* was the subject matter of challenge, and same vide order dated November 20, 2024, by a Co-ordinate Bench was dismissed.

3. On wading through the paper-book, necessity is felt for compartmentalization of these LPAs as same will shed light as to

how litigation has embroiled to the multiplicity and re-litigation, in an attempt to infuse the life into a dead horse, which of course is impossible.

4. Now, coming to the LPAOW No. 68/2018 arising out of OWP No. 809/2013, titled Ghulam Rasool Mistri Vs. State of J&K and ors. and LPAOW No. 116/2018 arising out of OWP No. 1784/2012, titled Ghulam Rasool Mistri Vs. State of J&K and ors, respectively, these LPAs are filed by same appellant, namely; **Ghulam Rasool Mistri** and both appeals in essence, rest on similar issues of facts and law, rather, it would be proper to say that soul of both the appeals lies in one skeleton. Appellant herein is also one of the appellants in third appeal bearing LPAOW No.118/2018, titled Abdul Hamid Dandra and ors. Vs. Srinagar Municipal Corporation and others and besides this he was also party in LPAOW No. 92/2018 titled **Abdul Hamid Dandroo and ors. Vs. State of J&K and others** arising from OWP No. 1536/2012, that stood already dismissed vide judgment dated November 20, 2024 passed by a Co-ordinate Bench.

5. The appellants in LPAOW No. 92/2018, arisen out of OWP No. 1536/2012, (already dismissed) and LPAOW No. 118/2018 (arising from OWP No.1166/2016) are the same.

6. Across the board appellants have continuously asserted their claim to the entitlement of the vesting of ownership rights over the land in question before different forums as they being in possession of the respective patches of the State lands by virtue of relinquishment deeds and thus are entitled to the conferment of the ownership rights under the provisions of **Jammu and Kashmir State Lands (Vesting of Ownership to Occupants) Act, 2001 (“Roshni Act”)**, but according to them the Corporation alleged to have been causing interference to dispossess them from the land in question and in addition also they have been seeking parity with other land owners, namely; Mst. Zainab Begum and Mirza Maqsood Ali, as well as Adnan Manzoor Ahangar, etc.

7. Above is direct and uncomplicated explanation of the core issue, therefore, we do not wish to burden this judgment with all the factual assertions adumbrated in the memo of appeals and arguments advanced at bar, in that even accepting

the proffered facts in their most granular form, they neither advance nor impair adjudication of the surviving issue.

8. In OWP No. 809/2013, the petitioner-Ghulam Rasool Mistri has thrown challenge to order No. 2340/2012 dated 10.11.2012 passed by Joint Commissioner (Adm) SMC, Srinagar, whereby after removing the encroachment made by the appellants, the possession of the land has been handed over to Mr. Adnan Manzoor, in compliance to the direction of this Court. Petitioner had also sought a direction for payment of Rs. 50 lacs as damages to him. Likewise, in OWP No. 1784/2012, he besides prayed for payment of Rs. 15 lacs as damages, further seeks restoration of the status quo ante on the spot, in respect of the land falling under Survey No. 437 min situated at Rampora Chattabal, Srinagar and to restrain the respondents from causing interference. Besides this, the petitioner has also sought direction for conducting probe by IGP Crime Branch for alleged illegal and contemptuous act of the respondents.

9. The desperation of appellant, Ghulam Rasool Mistri can be gauged from the fact that he is not only party in all the four appeals, but is also in litigation on the same subject matter

before the Civil Court and thus the writ Court has rightly observed that the writs filed by him would not lie

10. Insofar as the writ petition bearing OWP No. 1166/2016 which is subject matter of LPAOW No. 118/2018 is concerned, the petitioner, before the writ Court was none other than Srinagar Municipal Corporation [the Corporation], and the challenge was to the order dated 07.07.2015 passed by the Financial Commissioner (Rev) J&K Srinagar in revision petition filed by the private respondent Nos.1 to 22 against the order No. 498/LR dated 20.07.1992 passed by respondent No. 24 (Assistant Commissioner, Revenue, Srinagar). The Financial Commissioner, vide impugned order therein dated 07.07.2015 has disposed of the revision petition with a direction to the concerned authorities to dispose of the cases of the petitioner under the “**Roshni Act**” provided they had applied in time and fulfill the other conditions as prescribed under the **Roshni Act** with a specific rider that otherwise, in no way, the State land shall be allowed to be encroached upon. In the said revision petition before the Financial Commissioner, the appellants in LPAOW No. 118/2018 along with other occupants of the State land total 22 in number

have thrown challenge to the order bearing No. 498/LR dated 20.07.1992 and also for setting aside the entry made in the girdawari of the year, 1992 on the basis of said order of Moza Rampora Tehsil and District Srinagar.

11. By virtue of order dated 20.07.1992, the Assistant Commissioner, Srinagar directed the Tehsildar Srinagar to record possession of land measuring 41 kanals 01 marla under Survey Nos. 7 & 437 in estate Batamaloo and Rampora respectively, in favour of erstwhile Municipal Committee now Srinagar Municipal Corporation so as to manifest the possession of formal handing over of possession of land in revenue records.

12. This order earlier also was a subject matter of challenge before the Financial Commissioner, who vide order dated 22.10.1997 passed in revision petition No. 2 of 1997, titled Mehda and 25 others Vs. A.C Srinagar and anr., has dismissed by holding that order of the Assistant Commissioner cannot be construed as one for transferring the land in question to Srinagar Municipality, which power obviously does not vest with him but Assistant Commissioner was acting in accordance with the provisions of law to ensure that the revenue record depicts the

position emerging as a consequence of proceedings under Land Acquisition Act of physical transfer of the land to Srinagar Municipality. Therefore, the question of again settling the same issue in the second revision petition filed by the appellants before the Financial Commissioner which had given rise to LPAOW No. 118/2018 (OWP No. 1166/2016) titled Abdul Hamid Dandra and ors. Vs. Srinagar Municipal Corporation is just an abuse of process of Court.

13. Broadly speaking, the land in question total measuring 177 kanals, comprised in three survey Nos. 07 (Batmaloo), 437 (Rampora) and 139 (Bagh-I-Nandsingh) stand reflected in the name of Corporation (Srinagar Municipality in revenue records). Out of the land measuring 44 kanals 05 marlas, and 58 sq. ft, falling in Survey No. 537 was notified for acquisition by the State in terms of notification issued under endorsement No. 153-66/SQ/49 dated 26.05.1989 and on completion of acquisition proceedings, possession slip was executed by and between Manzoor Ahmad, Naib Tehsildar, Chattabal and Mr. Abdul Salam Bhat, Administrator, Municipality on 15.07.1992, whereby the two officers have certified to have handed over and taken over the

possession of land measuring 41 kanals 01 marla under Survey Nos. 7 of Batmaloo and 437 of Rampora. Furthermore, out of these 41 kanals, 01 marla of land comprised in Survey No. 7 is stated to be 29 kanals and 11 marlas, meaning thereby that the land measuring 11 kanal 10 marlas had been transferred to the Corporation from Survey No. 437. Therefore, without going further into these questions of facts, it is suffice to note that there are very categoric observations made by the writ Court that land in question on which petitioners are laying their respective claims has been transferred to the Corporation, which even otherwise, was recorded as **“State Land”**.

14. Insofar as possession of land by Adnan Manzoor S/o Manzoor Ahmad is concerned, he stated to have purchased 01 kanal of land by participating in open auction in 2004 for sale consideration of Rs. 42,50,000/- and said auction notice is said to have been published in press also. Therefore, appellants on admitted facts cannot seek parity with said Adnan Manzoor.

15. The appellants also seek the parity with one Mst. Zainab Begum and Mirza Maqsood Ali, however, from the record, it is borne out that the said portion of land over which Mst. Zainab

Begum and Mirza Maqsood Ali have been conferred the ownership rights falls in other patch of the land comprised in Survey No. 437, possession of which was not handed over/transferred to the Corporation, but the appellants-petitioners are claiming over that portion of the land which form part of the land possession of which is held by the Corporation. Therefore, due to this factual disparity, the appellants have no legal right of same treatment.

16. It has also come on record that claim of the appellants for conferment of ownership right came to be considered by the Government, but same was rejected.

17. Although the writ Court dealt with all the four writ petitions including the one stood dismissed by a Co-ordinate Bench on merits, nonetheless there are categoric findings of the writ Court that the possession of land comprising in two survey numbers viz 7 and 437 of two estates Batmaloo and Rampora respectively, stood handed over to the Corporation on the date of issue of communication dated 20.07.1992, therefore, this fact negates the case of the appellants that they have been in possession of the land in question. It has been further held by the writ Court that the possession of the department of the

Government or institution can be established only by entries in that regard made in the relevant record. It is further held by the writ Court that any department or institution is not expected to actually be present on the land to establish its possession and we are also in agreement with these observations of the writ Court.

18. The finding of possession of the Corporation over the land in question arrived by the writ Court on the basis of the admitted fact of handing over of the land to the Corporation in pursuance of acquisition proceedings held way back in the year, 1989 and further in view of the report of the Commissioner (Registrar Judicial of the High Court of J&K and Srinagar), who came to be appointed at the instance of petitioners and also this report of the Commissioner was never objected to.

19. Therefore, these appeals are nothing but classic case of re-litigation and multiplicity of litigation which practice needs to be discouraged, so as to prevent the time of public and Court from being wasted.

20. The Hon'ble Supreme Court in the case of K.K Modi Vs. K.N Modi and ors.; AIR 1998SC1297 has highlighted the concept

of re-litigation/multiplicity of litigation as an abuse of process of the Court and in this regard, in para No. 44 observed as under:-

“One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should

be sparingly exercised and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.”

21. The above noted facts go to depict a sorry state of affairs as to how appellants by presenting the facts in varied hues and interpretations across different Forums, continued to litigate and relitigate to justify their unjust claim over the “**State land**”, despite subject matter of litigation on hand involving plain and lucid facts and issues, the appellants have deliberately convoluted their presentation to prolong litigation and spawned multiplicity of proceedings.

22. Be that as it may, admittedly the land in question is the State land and now, is under the legal possession of the Corporation, therefore, question arises as to whether at this stage, any such right survives in view of the judgment passed by the Division Bench of this Court in case titled **S.K Bhalla (Prof.) Vs. State of J&K & ors., reported as, 2020 (5) JKJ 39 [HC]** whereby the Roshni Act is declared as unconstitutional, contrary to law and thus, held all the acts done under the Roshni Act as unconstitutional and void ab-initio.

23. After the statute under which appellants have been claiming their right of vesting of ownership in respect of land in question is declared as unconstitutional and void ab-initio, the appellants' claim extinguishes from its inception and thus legally neither can claim nor can derive any benefit from such void statute.

24. Although the appellants have also sought parity for conferment of ownership rights but the principle of parity is based on the guarantee of positive equality before law and if any illegality or irregularity has been committed by any forum, others cannot invoke the jurisdiction of the Court for repeating or multiplying the same illegality or irregularity.

25. In all the appeals, the sole legal foundation for every asserted right of ownership rests on the benevolence of Roshni Act that has been declared as completely unconstitutional and void ab-initio, therefore, once foundation crumbled into constitutional nullity, in that event, the claimants could not derive even iota of benefit from a void ab initio statute, as every superstructure erected thereon is wiped clean ab-initio, hence, we

do not deem it appropriate to go into the other aspects of the matter either raised or dealt by the writ Court.

26. In this view of the matter, we do not find any error of law or fact has been committed by the Writ Court while passing the judgment under challenge. Accordingly, all the three appeals are dismissed along with all connected CM(s).

JAMMU
11.11.2025
Tarun/PS

(SHAHZAD AZEEM)
JUDGE

(SINDHU SHARMA)
JUDGE

Whether order is speaking: Yes
Whether order is reportable: Yes

OF JAMMU & KASHMIR AND LADAKH

सत्यमेव जयते