

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

Reserved on 16.04.2025

Pronounced on 23.05.2025

**LPA No.44/2024
CM No.1246/2024**

Pawan Kumar Sharma, Age 54 years,
S/o Sh. Ram Dass Sharma,
R/o Village Tarore, Tehsil Bri Brahmana,
District Samba - 181133

.....Appellant

Through: Mr. Pawan Kumar Kundal, Advocate

versus

1. UT of Jammu & Kashmir,
through Commissioner/Secretary,
Revenue Department, Civil Secretariat,
at Jammu.
2. Deputy Commissioner, Samba,
Nandini Hills, Samba.
3. District Collector, Land Acquisition,
C/o Deputy Commissioner Office Samba,
Nandini Hills, Samba.
4. N.K. Jain, S/o Sh. M.R. Jain,
Director Pharose Remedies Ltd.,
registered office at 3rd Floor, KK Tower,
Civil Lines, Jalandhar City, Punjab.

.....Respondent(s)

Through: Mr. Rahul Pant, Sr. Advocate, with
Mr. Anirudh Sharma, Advocate.

Mrs. Monika Kohli, Sr. AAG, for 1 to 3.

**Coram: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

JUDGMENT

Rajesh Sekhri - J

1. Appellant has invoked, Letters Patent of this Court, to assail judgment dated 27.02.2024, passed by learned Single Judge of this Court [“the writ court], vide which his writ petition came to be dismissed as not maintainable.
2. Before a closer look at the grounds urged in the memo of appeal, it shall be expedient to have an overview of some uncontroverted facts.
3. The appellant claims to be owner in possession of a piece of land falling under Khasra No.37-Min, Khata No.21 and Khewat No.2, situate at Village Patli, Tehsil and District Samba. An Agreement to Sell came to be executed by him and notarized, in favour of respondent No.4 on 17.07.1997, by virtue of which, he agreed to sell one kanal of land to respondent No.4, for a sale consideration of Rs.50,000/-, through cheque bearing No.482697 dated 16.07.1997 of Canara Bank, Jammu and agreed to execute sale deed, within six months with a stipulation that in case of any defect in the title or possession, he shall pay double the amount to respondent No.4, to be recovered from his moveable and immovable property. Subsequently, he executed a Lease Deed in favour of respondent No.4 on 05.06.1999 with respect to the same land. Pertinently, the sale amount of Rs.50,000/-, which was paid by respondent No.4, by Cheque No.482697 dated 16.07.1997, to the appellant at the time of execution of Agreement to Sell, was treated as rent for the entire lease period. A notification came to be issued by Deputy Commissioner, Samba-respondent No.2 on 16.04.2022 for acquisition of land at different locations including Village Patli, Tehsil and District Samba, for the construction of Delhi-Amritsar-Katra Expressway under the National Highways Act and two marlas

land, out of the aforesaid land, also came to be acquired. In the settlement proceedings Khasra No.37-Min was allotted new Khasra No.140 and the said khasra number was also reflected in the notice of District Collector, Land Acquisition-respondent No.3. An award came to be prepared and issued by respondents 2 and 3 in favour of respondent No.4, who figured at Sr. No.13 of the list against Khasra No.140, though appellant was shown as owner of the subject land.

4. The case set out by the appellant is that neither agreement to sell nor lease deed confer any title upon respondent No.4. Agreement to sell was cancelled with the consent of the parties and since respondent No.4 did not file any case against him for execution of sale deed, the award amount cannot be released in favour of his tenant, respondent No.4, who only has right of use and occupation of the subject land. It is also case of the appellant that he filed three applications for release of compensation in his favour, but, neither those applications were decided nor he was given an opportunity of being heard by the Collector and respondent No.3 arbitrarily proceeded to release compensation in favour of respondent No.4.

5. The appellant sought following reliefs in his Writ Petition:

- “i. Mandamus: For commanding and directing the respondent Nos.2 & 3 to release the land compensation of the land measuring two marla falling under Khasra no.140/37 situated on National Highway at village Patli Morh district Samba which is owned by the petitioner and given on lease to the respondent No.4.
- ii. Prohibition, commanding and restraining the respondent no.2 & 3 from releasing the land compensation in favour of the respondent no.4 which respondent no.2 & 3 are going to release in favour of respondent no.4 by exceeding their power.

- iii. Any other appropriate order or direction as the facts of the case demand and this Hon'ble Court may deem just and proper may also be issued in favour of the applicant and against the respondents."

6. The writ petition came to be dismissed as not maintainable on the predominant premise that the issue regarding payment of compensation is to be determined only by the authority concerned in terms of the provisions of National Highways Act, 1956 ["the Act"]. Learned Writ Court is of the view that since the appellant petitioner, by execution of the lease deed, had agreed that in the event the subject land was acquired, respondent No.4 shall be entitled to receive compensation not only for the structures but, besides such structures, for the land beneath as well, therefore, he cannot be allowed to approbate and reprobate and respondent No.4 has absolute right to seek compensation for the land as well as the structures acquired by the official respondents.

7. The appellant is aggrieved of the impugned judgment, primarily on the ground that learned Writ Court despite being conscious that it is only the authority concerned, in terms of Section 3H(3) of the Act, to determine the person entitled to seek the amount payable, when several persons claimed to be interested in the amount deposited under Sub-Section (1), has proceeded to return finding on the merits of the case by interpreting Clause 7 of the Lease Deed. According to the appellant, a particular clause of a document is required to be interpreted and given meaning according to the nature of the document executed and the right created therein.

8. Mr. Kundal, learned counsel for the appellant, while reiterating the grounds urged in the memo of appeal, has invoked Section 13 of J&K Alienation of Land Act, 1995 ["Land Alienation Act"] to contend that since

lease of an agricultural land by a member of agricultural class cannot be made for a term exceeding 21 years, therefore, the appellant by executing the lease deed in question, created tenancy in favour of respondent No.4, because he never intended to alienate the subject land.

9. *Per contra*, Mr. Pant, learned senior counsel for private respondent No.4, has reiterated the grounds, on the basis of which writ petition came to be dismissed by the writ court.

10. Having heard the rival contentions, we have given our anxious consideration to the facts and circumstances obtaining the case and the legal position governing the field.

11. Ordinarily, if a petition does not meet the legal requirements for being heard and is determined to be not maintainable, it is required to be dismissed without examination of merits of the case. However, in exceptional cases, the court might proceed to consider the merits of a petition, even if it is deemed not maintainable, in the context of specific circumstances and the relief sought for. There is no quarrel to the legal position that where several persons claimed to be interested in the amount deposited by the Government, it is the competent authority who is obliged to determine the persons entitled to receive the amount payable to each of them in terms of sub section 3 of Section 3(H) of the Act and, in this view of the matter, the writ petition preferred by the appellant, was rightly held by the Writ Court as not maintainable. However, learned Writ Court rightly proceeded to return a finding on the merits of the case in view of a mandate sought by the appellant commanding the official respondents 2 & 3 to release the compensation of subject land in his favour.

The writ petition was neither maintainable on law nor on facts for various reasons.

12. At the foremost, we find ourselves in agreement with the prime contention of learned counsel for the appellant that a particular clause of a document is required to be interpreted and given the meaning according to the nature of the document executed and the right created thereunder.

13. It is an admitted position of fact on the record that appellant executed an agreement to sell in favour of respondent No.4 in the year 1997 for a sale consideration of Rs.50,000/- paid to the appellant by cheque dated 16.07.1997. The appellant not only received the entire sale consideration, but handed over vacant possession of the said land to respondent No.4. Relevant clauses of the said agreement are as below:

“This Agreement to Sell has been executed at Jammu on this 17th day of July, 1997 by and between Shri Pawan Kumar Sharma S/o Sh. Ram Dass Sharma R/o Pattli Tehsil Samba district Jammu, hereinafter called the 1st party vendors, which expression shall mean, include and bind all the legal heirs, executors, administrators etc of the one part.

AND

Sh. N.K. Jain S/o Sh. M.R. Jain R/o 111-A/D Gandhi Nagar, Jammu hereinafter called the party of the 2nd part, vendee, which expression shall mean, include and hind all the legal etc of the 2nd part on the following terms and conditions:-

Whereas the party of the 1st part is ownership possession of land measuring one kanal under Khasra No.37 Min situated at Pattli Tehsil Samba District Jammu which is free from all the encumbrances and charges of sale, mortgage, lease, rent gift etc.

Whereas the 1st party have sold the above mentioned land to the 2nd party for sale consideration of Rs.50,000/- (Fifty thousand only) through cheque No.482697 dated 16.7.1997 for Rs.50,000/- of Canara Bank, Jammu.

xxx xxx xxx

Whereas, **the party of the 1st part after receiving the full and final payment of the above mentioned land have handed over the peaceful possession of the land to the 2nd party.**

(Emphasis Supplied)

14. It appears that when formal sale deed could not be executed between the parties, the appellant executed the Lease Deed in favour of respondent No.4 for the same consideration and with respect to the same land, the possession whereof had already been delivered to respondent No.4. Significantly, the same sale consideration of Rs.50,000/- paid by Cheque No.482697 dated 16.07.1997 of Canara Bank, Jammu was treated as rent for the entire lease period, which is on perpetual basis. Relevant clauses of the lease deed are as below:-

- “1. That the duration of the lease shall be **perpetual** basis and shall be deemed to have commenced from 1st June 1999.
2. The total rent for entire lease as mutually agreed at Rs.50,000/- and has **already been paid to the Lessor vide Cheque No.482697 dated 16.07.97 for Rs.50,000/- of Canara Bank Jammu** in advance and nothing remain due on account of **rent of the perpetual lease property** henceforth. And also the execution of a formal lease documentation proof thereof.
7. That **in the event of land or any part thereof being acquired by the Govt. or any other authority, the Lessee shall have full authority to stake such claim and claim such compensation as may be determined by such authority from the acquisition/requisition authority, Govt. or any other authority under the order of the Govt. in respect of the building, machineries, plants etc. raised on the above said lease hold land, besides the land beneath it.**
10. After the expiry of this perpetual lease period, the lessee shall have right to get it renewed for another period by increase of proportionate rent.”

(Emphasis Supplied)

15. It is evident from the covenants of the Lease Deed that duration of the lease is perpetual and appellant had received Rs.50,000/- for the entire lease period, which had already been paid to him by way of same cheque, which was

given to him at the time of execution of Agreement to Sell. It is also manifest that in the event of land or any part thereof being acquired by the Government or any other authority, the lessee-respondent No.4 has full authority to stake the claim of compensation as may be determined by the authority, not in respect of the building, machineries, plants etc. raised on the lease hold land, but also the land beneath it. It is evident from the expression “besides” in Clause 7 of the Lease Deed that the lessee-respondent No.4, apart from or in addition to the building, machineries, plants etc., can also stake the claim for compensation in respect of the lease hold land beneath the structure. Pertinently, since the appellant by execution of Agreement to Sell had already agreed that he will not have any interest, right or title over the land, it is precisely for this reason that in the Lease Deed all kinds of permissions were given by him to respondent No.4, the lessee, including the power to mortgage lease hold rights as also provided that in the event land or any part thereof is acquired by the Government or any authority, lessee shall have full authority to claim compensation.

16. If the covenants of sale deed and lease deed aforementioned are read in conjunction, there is no doubt that transaction between the parties is nothing short of alienation of subject land. It is evident from a conjoint reading of both the documents that intention of the appellant right from the inception was to alienate 01 kanal of land to respondent No.4, with respect to which he not only received the entire sale consideration, but handed over vacant possession of the same to respondent No.4.

17. Learned counsel for the appellant has taken us through Clause 10 of the Lease Deed to contend that since after the expiry of perpetual Lease Deed, the

lessee was given a right to get it renewed for a further period by increase of proportionate rent, therefore lease is not perpetual and lessee was given a right of use and occupation only. We do not find any substance in the argument of Mr. Kundal for the simple reason that it is not the form but substance of a document which is to be taken into consideration to determine the rights. Though Clause 10 of the Lease Deed provides a right to the lessee to have the Lease Deed renewed for another period, however, if it is read as a whole, there is no doubt that duration of the lease is perpetual in view of Clause 1 and transaction between the parties makes it clear that appellant has alienated the subject land in favour of respondent No.4, with respect to which he has not only received full and final consideration but had already handed over the possession. Respondent No.4, by virtue of Clause 7 of Lease Deed has acquired full authority to stake claim of compensation, in the event of acquisition of the subject land or any part thereof by the Government or any other authority.

18. Another plea raised by Mr. Kundal, learned counsel for appellant is that a member of an agricultural class is barred from making a lease of his agriculture land for a term exceeding 21 years in terms of Section 13 of Alienation of Land Act, therefore appellant executed lease in favour of respondent No.4, with a right of use and occupation only and get it renewed by increase of proportionate rent.

19. Section 13 of Alienation of Land Act reads as below:

“13. Leases and farms

Any member of an agricultural class may make a lease or farm of his land for any term not exceeding twenty-one years and any lease or farm made by a member of an agricultural class for a

longer term than twenty-one years, be deemed to be a lease or farm for the term of twenty-one years.”

20. No doubt, creation of lease hold rights of an agricultural land by a member of agricultural class for any term exceeding 21 years is barred under Section 13 of Alienation of Land Act. However, be it noted that it is the appellant, who not only executed the lease deed on 05.06.1999, in favour of respondent No.4, but he is also privy and signatory to the lease agreement. The argument of Mr. Kundal, learned counsel for the appellant that lease deed in question is violative of Section 13 of the Alienation of Land Act deserves outright rejection for the simple reason that nobody can be allowed to plead his own fraud and right of action cannot arise out of transgression of law. It embodies the doctrine of *pari delicto, potior est conditio defendentis et possidentis*, i.e., where both the parties to the contract are equally at fault in entering into an agreement, in which law will leave them alone and will not intervene to determine their interse rights and liabilities relatable to the contract.

21. The facts and circumstances obtaining the present case are identical to the fact situation of **Smt. Narayanamma and another. vs Govinddapa & others, AIR 2019 SC 4654**. In the said case, initially the predecessor-in-title of the defendant(s) had executed a registered mortgage deed in favour of the plaintiff. Within a month, he entered into an agreement to sell, wherein the entire consideration for the transfer of the land and handing over of the possession was acknowledged. Under Section 61 of the Karnatka Land Reforms Act, there was a complete prohibition on such mortgage or transfer for a period of 15 years from the date of grant. Sub section (3) of Section 61 of the said Act made the legislative intent very clear that any transfer in violation

of sub section (1) shall be invalid and it also provided for the consequence for such invalid transaction. A plea was raised by the plaintiff that the transfer of land in question was made within the prohibited period of 15 years and thus was invalid. It was held by Hon'ble Supreme Court that it was evident that the transaction was nothing short of a transfer of property. Since both the plaintiff and predecessor-in-title of defendant(s) were privy in this illegality, both were said to be equally responsible for violation of law, thus the dismissal of suit of the plaintiff by the trial judge was held proper. Relevant extract of the judgment captured in paragraphs 23, 24 and 25 are extracted below:

“23.Initially the said Bale Venkataramanappa had executed a registered mortgage deed in favour of the plaintiff. Within a month, he entered into an agreement to sell wherein, the entire consideration for the transfer as well as handing over of the possession was acknowledged. It could thus be seen, that the transaction was nothing short of a transfer of property. Under Section 61 of the Reforms Act, there is a complete prohibition on such mortgage or transfer for a period of 15 years from the date of grant. Subsection (1) of Section 61 of the Reforms Act begins with a non-obstante clause. It is thus clear that, the unambiguous legislative intent is that no such mortgage, transfer, sale etc. would be permitted for a period of 15 years from the date of grant. Undisputedly, even according to the plaintiff, the grant is of the year 1983, as such, the transfer in question in the year 1990 is beyond any doubt within the prohibited period of 15 years. Subsection (3) of Section 61 of the Reforms Act makes the legislative intent very clear. It provides, that any transfer in violation of subsection (1) shall be invalid and it also provides for the consequence for such invalid transaction.

24. Undisputedly, both, the predecessor-in-title of the defendant(s) as well as the plaintiff, are confederates in this illegality. Both, the plaintiff and the predecessor-in-title of the defendant(s) can be said to be equally responsible for violation of law.

25. In such a case, as observed by Taylor, in his “Law of Evidence” which has been approved by Gajendragadkar, J. in Immani Appa Rao (AIR 1962 SC 370) (supra), although illegality is not pleaded by the defendant nor sought to be relied upon him by way of defence, yet the Court itself, upon the illegality appearing upon the evidence, will take notice of it, and will dismiss the action *ex turpi causa non oritur actio* i.e. No polluted hand shall touch the pure fountain of justice. Equally, as observed in Story’s Equity Jurisprudence, which again is approved in Immani Appa Rao (supra), where the parties are concerned with illegal agreements or other transactions, courts of equity following the rule of law as to participators in a common crime will not interpose to grant any relief, acting upon the maxim *in pari delicto potior est conditio defendentis et possidentis*.”

22. It is evident from the aforequoted observations of the Apex Court that if both the parties are confederates in illegality, courts will not interpose to grant any relief and the law favours him, who is actually in possession.

23. Since the appellant not only executed the lease deed in question in favour of respondent No.4, but a signatory to the same and is a confederate to the illegality that alienation of agricultural land was prohibited by Section 13 of Land Alienation Act, he cannot be allowed to turn around and question the legality of the lease deed.

24. For all these reasons, we concur with the observation of learned Writ Court that a party cannot be allowed to approbate and reprobate at his sweet will and convenience and take the court for a ride, lest the whole judicial system shall fail.

25. Having regard to the aforesaid, we do not find any illegality or perversity in the impugned judgment. Hence the present appeal is dismissed and impugned judgment is upheld.

26. Connected CM, accordingly, stands disposed of. Interim direction, if any, shall stand vacated.

Jammu
23.05.2025
(Anil Sanhotra)

(Rajesh Sekhri)
Judge

(Sindhu Sharma)
Judge

Whether the order is reportable ?	Yes
Whether the order is speaking ?	Yes