

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

WP(C) No. 1557/2020 CM No. 4337/2020 CM No. 722/2024 c/w
OWP No. 2415/2018 IA No. 01/2018

Mohammad Shafi Beigh

...Petitioner(s)

Through: Mr. Bakhat Parvaiz, Advocate.

Vs.

UT of J&K and Ors.

...Respondent(s)

Through: Mr. Hakim Aman Ali, Dy.AG.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

05.02.2025

(ORAL)

1. The issues involved in the instant petitions are interconnected and analogues to each other and are taken up, as such, for final disposal at this stage with the consent of appearing counsel for the parties.

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2. The petitioner herein claims to have provided his proprietary land, measuring 5 marlas covered under survey Nos. 289 and 290, Khewat No. 67 and Khata No. 162 to 190 situated at Palpora Handwara to the respondents herein for the construction of a ration depot/godown in the year 1990, with an understanding and assurance by the respondents that one of his family members will be appointed against a Class-IV post in the Department, and that the respondents, however, did not adhere to said assurance, despite the fact that repeated requests and representations were made in this regard by the petitioner from time to time, and that in the year 2017, upon one such representation, a detailed report was sought by respondent 4 from respondent 6 in the matter, whereupon, in terms of letter No. ADFCSCA/Kup/2017/5563 dated 2nd of March 2017, it came to be verified and authenticated that the petitioner herein had provided the land for the construction of the depot/godown, and that a ration depot stands constructed over the 5 marlas of land of the petitioner herein, and that, despite the said

report, the respondents did not redress to the grievance of the petitioner herein, compelling the petitioner herein to approach the Deputy Commissioner Handwara in this regard, and a report, consequently, came to be submitted by the Collector/Additional Deputy Commissioner Handwara to the Deputy Commissioner Handwara in this regard vide letter dated 6th of January 2020, stating therein the said report that the land compensation case of the petitioner herein is pending and that the petitioner herein has also applied for allotment of a fair price shop in favour of his son in lieu of the land in question and that, despite the respondents having acknowledged and admitted that the land of the petitioner herein has been used and utilized by the respondents herein for construction of a ration depot, the respondents neither offered appointment to a family member of the petitioner as promised nor paid any compensation thereof in lieu of the land to the petitioner compelling the petitioner herein to approach this court through the medium of the instant petition seeking a relief that the respondents herein be directed to issue a fair price dealership licence in favour of a petitioner's son, in lieu of the land used and utilized by the respondents herein for construction of the ration depot or to issue any other Writ, order or direction which the Hon'ble court may deem fit and proper in the facts and circumstances of the case.

3. **Objections** to the petition have been filed by the respondents wherein the petition is being opposed, *inter alia*, on the premise that the same is afterthought to garner an undue advantage by the petitioner herein and that the land in question is Shamilat-e-Deh land and a ration depot/godown came to be constructed by the respondents herein long back before 33 years while admitting that the land in question was donated by the petitioner herein to the Government and that the petitioner herein has not filed any document to establish ownership of the land in question and as such the petitioner herein has no cause of action whatsoever against the respondents to maintain the instant petition.

It is further stated in the objections that prior to the filing of the instant petition, petitioner herein had filed a writ petition bearing

number WP(C) No. 2415/2018 (clubbed petition) wherein the petitioner herein in respect of the land in question had sought a relief against the respondents from this court for directing them to offer appointment to his son against the Class-IV post in lieu of the land used and utilized by the respondents for construction of the ration depot.

Heard counsel for the parties and perused the record.

4. Perusal of the record reveals that the petitioner herein admittedly filed WP(C) No.2415/2018 (clubbed petition) initially before this court and sought the following reliefs qua the land measuring 05 marlas in question: -

(I) Writ of Mandamus, commanding the respondents to offer appointment to the petitioner's son on any Class-IV post in lieu of the land given by the petitioner for construction of Ration Depot (Godown) situated at Palpora Magam, Tehsil Handwara, District Kupwara.

(II) Writ of Mandamus commanding the Respondent to pay monthly compensation for use of land to be determined by Respondent No. 2 (Deputy Commissioner, Kupwara) from the date possession was taken till date at current market rate for the use and construction of Ration Depot (Godown) on the petitioner's land situated at Palpora Magam, Tehsil Handwara, District Kupwara.

(III) No. 4 to be dutiful and perform his statutory duty in terms of the order passed by the Learned Court of Additional Special Mobile Magistrate Shopian dated: 14-07-2018 and to investigate the matter u/s 202 Cr. PC and file detailed report on priority basis.

5. During the pendency of the petition supra before this court record reveals that the petitioner herein instituted WP(C) No.1557/2020 (lead petition) and has sought the following reliefs: -

Writ of Mandamus, commanding the Respondent No: 3 to issue Fair Price dealership licence in favour of Petitioner's son in terms and in tune with communication bearing No: ADFCS&CA/Kup/2020/1183 dated: 17/02/2020 in lieu of the land given by the petitioner for construction of Ration Depot (Godown) situated at Palpora Magam, Tehsil Handwara, District Kupwara.

6. It is not in dispute that in both the petitions the petitioners have contended that the respondents herein used and utilized his proprietary land measuring 05 marlas for construction of ration depot/godown

with an assurance that an appointment would be offered to one of his family members in lieu thereof and upon the failure of the respondents to adhere to the said promise the petitioner herein alternatively sought compensation of the said land or else issuance of a fair price shop licence in favour of his son.

7. Record reveals that the respondents herein have not denied the fact that the petitioner herein provided the land in question for the construction of the ration depot/godown, however what is being disputed and denied by the respondents is that the land in question is Aabadi-Deh land petitioner not being owner of the same and has been voluntarily donated by the petitioner herein for construction of a ration depot/godown, and that the petitioner herein has not supported the ownership over the said land with any documentary proof, as such, the petitioner herein is neither entitled to any appointment or compensation qua the land in question and the respondents are not bound to offer any appointment in lieu of the land to any family members of the petitioner or else issue a fair price shop license to his son.
8. A deeper and closer examination of the record available on the file reveals that the land in question indisputably is Shamilat-e-Deh land and as per the records of the revenue Agency, (Naib Tehsildar Handwara) is recorded in the name of the petitioner herein having got vested unto the petitioner herein under Section/Rule 5 as Shamilat-e-Deh land on Pro-rata basis in proportion to his proprietary land, thus, in this view of the matter, the plea of the respondents that the petitioner herein is not the owner of the land, is found to be factually incorrect, in that, the law in regard to Shamilat-e-Deh land covered under Section/Rule 5 is as good as proprietary land, having been held so by this court in a series of judgments including in case titled as **“Abdul Rehman Teli Vs. State of JK and Ors.”** and that in case such Shamilat-e-Deh land is acquired/taken over from the possessor of such land, being treated owner thereof, is entitled to compensation thereof. In view of the aforesaid legal position, the respondents thus, cannot dispute or deny petitioner’s ownership over the land in question.

9. In so far as the plea of the respondents that the land was voluntarily given by the petitioner herein to the respondents is concerned, the respondents have not placed on record any proof in support thereof to suggest or show that the land was donated by the petitioner herein though out of his own free will yet without any condition, in that, the petitioner herein admits to have provided the land in question to the respondents, however, subject to the assurance of the respondents that in lieu of the said land, one of the family members of the petitioner herein would be offered an appointment in the Department. It is highly improbable that owner of a land would donate the same to the Government without any compensation or without any reason.

Further perusal of the record available on the file reveals that the petitioner herein seemingly has been repeatedly and continuously approaching the respondents herein in connection with the claims qua the land in question, initially seeking an appointment for one of his family members from the respondents in lieu of the land in question, and subsequently for issuance of a fair price shop license, and lastly for compensation for the land in question after his requests/representation had failed to yield any fruitful results thereof.

10. It is the cardinal principle of rule of law that nobody can be deprived of liberty or property without due process or authorization of law, and the said principle has been reiterated and endorsed by the Apex court consistently and continuously in series of judgments including in cases titled as **“Sukh Dutt Ratra and Another Vs. State of Himachal Pradesh and Ors”**., reported in **2022 (7) SCC 508** wherein at paras 13, 14, 23 and 24 it has been held as under: -

13. While the right to property is no longer a fundamental right, it is pertinent to note that at the time of dispossession of the subject land, this right was still included in Part III of the Constitution. The right against deprivation of property unless in accordance with procedure established by law, continues to be a constitutional right under Article 300-A.

14. It is the cardinal principle of the rule of law, that nobody can be deprived of liberty or property without due process, or authorization of law. The recognition of this dates back to the 1700s to the decision of the King's Bench in *Entick v. Carrington*¹⁷ and by this court in *Wazir Chand v. The State of Himachal Pradesh*¹⁸. Further, in several judgments, this court has repeatedly held that rather than enjoying a wider bandwidth of

lenience, the State often has a higher responsibility in demonstrating that it has acted within the confines of legality, and therefore, not tarnished the basic principle of the rule of law.

23. This Court, in Vidya Devi facing an almost identical set of facts and circumstances -rejected the contention of "oral" consent to be baseless and outlined the responsibility of the State: (SCC p. 574, para 12)

"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 v. Maharashtra Industrial Development Corpn. 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 multi-faceted dimension."

24. And with regard to the contention of delay and laches, this Court went on to hold: (Vidya Devi case, SCC pp. 574-75, para 12)

"12.12. The contention advanced by the State of delay and laches of a 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.

12.13. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it."

11. For what has been observed, considered and analyzed herein above, the instant petition deserves to be allowed and while moulding the relief sought in the petitions same are disposed of as under: -

"Respondents are commanded to treat the land measuring 05 marlas covered under survey Nos. 289 and 290, Khewat No. 67 and Khata

Nos. 162 to 190 situated at Palpora Handwara of the petitioner herein deemed to have been acquired and consequently the respondents shall work out and compute the amount of compensation payable to the petitioner herein in lieu of the said land along with consequential solatium interest @ 6% p.a. on all sums to the petitioner. The respondents shall undertake and conclude the aforesaid exercises within a period of three months from the date of passing of this order.”

12. Disposed of.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

05.02.2025

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