

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

Sr. No. 14

PIL No. 41/2014
IA No. 2/2018
IA No. 67/2015
IA No. 288/2014
c/w
OWP No. 43/2011
IA No. 43/2011
OWP No. 933/2015
PIL No. 6/2019 [WP(C) PIL
No. 6/2019

Ankur Sharma

..... Appellant/Petitioner(s)

Through :- Petitioner in person.

V/s

State of J&K and others.

.....Respondent(s)

Through :- Mr. S. S. Nanda, Sr. AAG
Mr. Raman Sharma, AAG

Coram:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

ORDER

1. *The Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Act, 2001 (known as the "Roshni Scheme")* was enacted in 2001 by the then State Government after the assent of the Governor on 9th November, 2001. It is stated therein that the object of the Act was *"to provide vesting of ownership rights to the occupants of the State land for the purposes of generating funds to finance power projects in the State"*. This enactment stands repealed on 28th November, 2018 by the State Administrative Council (SAC) led by the Governor annulling the Roshni Scheme after concluding that it had not served *"its purpose"* and was *"no longer relevant in the present context"*

2. This writ petition was filed by a law student relying on the report of the Comptroller and Auditor General of India, Report No. 1 of the year, 2014 (Annexure-D at page 56) with regard to the working of the Act. The operative part of the CAG Reports reproduced in the writ petition reads as follows:

“The principle objective of the Act was to raise resources for investment in power sector and the Government had estimated (November 2006) resource mobilization of about Rs. 25448 crores by selling 2064972 kanals state land under unauthorized occupation. However, it was observed that only Rs. 76.24 crore (24 per cent) reportedly realized against a demand of Rs. 317.54 crore raised by the end of march, 2013 in the actual transfer of 348160 kanals in the State. Thus, the principle objective of the Act viz. raising of resources for investment in power sector was not achieved though the state has lost sizeable lands. Of this, the major portion (3,40,091 Kanals) has been categorized as ‘agricultural’ and hence transferred free of cost. Balance is residential use: 6949 Kanals, commercial use: 990 Kanals and Institutional use: 130 Kanals. In 547 cases covering revenue of 31.53 percent (Rs. 100.12 crore out of Rs. 317.54 crore) of the total transfers approved in the state and 0.19 per cent of land i.e. 666 kanals out of 3,48,160 kanals of land, the statutory committees had fixed the price at Rs.325.39 crore at an average rate of Rs.48.46 lakh per kanal (before allowing rebates and incentives). After allowing the discounts over the land price fixed by the statutory committees, the applicants were asked to pay only Rs.100.12 crore. Thus there was a loss of Rs.225.26 crore to the State Exchequer. Further, after transfer of 3,48,160 kanals under the Act, new encroachments are continuing unabated as area of public lands under encroachment was 20,46,972 kanals in March, 2013 as against 20,64,972 kanals in November 2006.”

The above points were reported to the Government (July 2013); the government in its interim reply stated (September 2013) that there was no deviation in the implementation of Roshni Act and action would be taken against erring officials if anything is found wrong. The reply of the Department does not relate to audit findings. The Department confirmed that the rules framed by the Government were not approved by the Legislature, there being no statutory requirement to this effect. Since the rules made have been published in Gazette, the general public and the legislature in any case deemed informed about the provisions. This per se cannot justify the infirmities in the Rules.”

(Emphasis supplied)

3. In the writ petition, reference has been made to the newspaper reports published in the issues “***The Hindu***” dated **5th March 2014** and “***Daily Excelsior***” dated **9th March, 2014**.

4. The petitioner has challenged the constitutionality of the said enactment and sought the following prayers:

- (i) *Declaring the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Act, 2001 and the rules framed thereunder i.e. The J&K State Lands (Vesting of Ownership to the Occupants) Rules, 2007 as unconstitutional/illegal being ultra-vires the Constitution of India and the Constitution of State of Jammu and Kashmir.*
- (ii) *Commanding the respondents to disclose before this Hon’ble Court the names of the illegal occupants/beneficiaries who have been conferred the benefit of the aforementioned Act which is illegal/unconstitutional and all such orders of regularizations and consequential mutations attested under the impugned Act be declared void ab-initio/non est/illegal and the State Land so regularized be retrieved from the said illegal occupants/beneficiaries.*
- (iii) *Commanding the respondents to retrieve the State Land measuring twenty lacs forty six thousand four hundred and thirty six (2046436) kanals which is under the illegal occupation of the land mafia and the said encroachment is evident from the reply of the Revenue Department to a Starred A.Q. No. 618 tabled by Mr. Yash Paul Kundal (MLA) in the J&K State Legislative Assembly.*

- (iv) ***Commanding the respondents not to issue any further SRO/Notification for extending the date for inviting fresh claims under the impugned Act for conferring ownership rights to the illegal occupants with regard to the left over state land i.e. Land measuring twenty lacs forty six thousand four hundred and thirty six (2046436) kanals.***
- (v) ***Commanding the respondent not to process any further case for conferment of ownership rights under the impugned Act/Rules.***
- (vi) ***Commanding the respondent to file and Action Taken Report (ATR) with regard to the implementation of Section 8 (5) (6) and Section 9 of the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Act, 2001.***

(Emphasis by us)

5. On the 7th March, 2018, we had directed the official respondents to place before us complete list of the persons who have been benefited under the *Jammu and Kashmir State Lands (Vesting of Ownership to the occupants), Act 2001*. This direction was not complied with and was reiterated by us on 13th November, 2018, 14th March, 2019, 7th February, 2019 and 21st November, 2019.

6. On 21st November, 2019, we were compelled to direct that in case the complete list of the persons as directed with regard to lands in Jammu, Kashmir as well as Ladakh regions is not furnished, the Secretary, Revenue Department shall remain personally present on the next date of hearing.

7. It is this direction which has persuaded the respondents to file a Compliance Report dated 27th December, 2019.

8. The previous attempts to withhold the information from this court is evident from paragraphs II & III of the Compliance Report dated 27th December, 2019, which reads as follows:

“That in compliance to the directions of the Hon’ble High Court the answering respondent took up the matter with the Financial Commissioner, Revenue and Divisional Commissioner, Jammu/Kashmir to furnish the list of

beneficiaries under Roshni Act vide communications dated 15.03.2018, 19.03.2018, 03.04.2018, 23.04.2018, 12.07.2018 and 22.11.2018. The copies of communications dated 15.03.2018; 19.03.2018, 03.04.2018, 23.04.2018, 12.07.2018 and 22.11.2018 are annexed at annexure R-1, R-2, R-3, R-4, R-5 and R-6 and again on 15.03.2019, 14.05.2019 and 05.09.2019.

III. That the answering respondent has received list of beneficiaries from District Pulwama on 15.07.2019 Kulgam on 15.04.2019, Shopian on 25.07.2019, Srinagar on 25.09.2019, Baramulla on 22.10.2019, Bandipora on 25.4.2019, Budgam on 7.5.2019 (revised list from Tehsil Beerwah on 26.12.2019) Ganderbal on 14.5.2019 Anantnag on 20.5.2019 and from the district Kupwara on 10.12.2019, the same is annexed as Annexures R-10, R-11, R-12, R-13, R-14, R-15, R-16, R-17, R-18 and R-19 respectively.”

9. This status report reveals shocking state of affairs which had prevailed and the manner in which the land encroachers in Jammu and Kashmir have become owners of large trenches of public land by the operation of the Roshni Scheme.

10. It is submitted by Mr. S. S. Nanda , Sr. AAG that so far as **region wise distribution of the beneficiaries** is concerned, the same is as follows:

- (i) **Jammu= 25,000**
- (ii) **Srinagar= 4500**
- (iii) **Ladakh = nil**

11. We note that compliance report is accompanied with affidavit of the Deputy Commissioner. We had required that the information, which is furnished, is authenticated and also a complete list filed on record.

We therefore, direct the respondents to file an affidavit of an officer not below the rank of Secretary, Revenue Department affirming before us that the list furnished before us is correct and complete in all respects. Such Affidavit shall be filed within one week from today.

12. We also find that by the order dated 07th March, 2018, this Court had directed submission of the list of the beneficiaries before the Registry for publication in a newspaper having wide circulation in Jammu and Kashmir.

13. It is submitted by Mr. S. S. Nanda, learned Sr. AAG that he is not being given the details of publication charges by the Registry.

14. It is submitted by Mr. S. S. Nanda, learned Sr. AAG that the State may be permitted to get the publication effected through the Commissioner/Secretary, Department of Information and Broadcasting, which would expedite the publication. It is so directed.

15. Before further proceeding in the matter, we direct the respondents to effect a calculation of the value of the public land which has vested in the encroachers, list whereof has been furnished before us.

16. We would also like to be informed of the division of the land in terms of its classification as urban, rural, forest land or of any other nature.

17. Our attention also stand drawn to report dated 16th February, 2020 published in the "*Business Standard*" captioned as "*Illegal entries on 659 acres of forest and state land detected in Jammu*". A perusal of the report shows that the Deputy Commissioner, Jammu has unearthed the illegal entries on the forest and the State land on 659 acres and two places in Jammu. The matter regarding examination of illegal entries is still going on.

18. The Deputy Commissioner, Jammu shall ensure that enquiries in to all such entries is effected expeditiously.

19. The Deputy Commissioner, Jammu shall ensure that strict action is taken against the public and private person who are responsible for these entries.

20. The Deputy Commissioner, Jammu shall also draw the list of the beneficiaries of such fake entries as well as the persons who were placed in the positions of authority responsibility, when such fake entries were effected in the revenue records.

21. All steps for recovering the land which may have been illegally encroached premised on such fake entries shall be taken forthwith.

22. A report in this regard shall be filed by the Deputy Commissioner, Jammu before the next date of hearing.

23. We would like to be informed as to whether there has been any legislation similar to the Jammu and Kashmir Lands (Vesting of Ownership to the Occupants) Act, 2001 enacted by the Central Government or any other legislature in India. Copy whereof shall be placed before us by the learned counsel for the parties.

24. It is submitted by Mr. Ankur Sharma that list of persons who have benefitted by the Roshni scheme includes the names of several public figures and Government officials and submits that he will prepare the extract in this regard and place the list before this Court before the next date of hearing.

25. He submits that he has filed CMP No. 48/2014 in PIL No. 19/2011 in this petition praying for CBI inquiry into the matter for the reason that Comptroller and Auditor General of India had reported that implementation of the Roshni Scheme has resulted in a loss over Rupees Twenty Five Thousand Crores to the public exchequer. This matter cannot be ignored under any circumstances and shall be examined on the next date of hearing.

26. The report regarding publication shall be placed before us on the next date of hearing.

List on 12th March, 2020.

OWP No. 933/2015

1. This writ petition relates to the contention of the petitioner that more than 10 kanals of forest land, comprised in Khasra No. 356-min, situated at Nowabad, Sunjwan, Jammu stands encroached by the respondent No. 4, who has constructed a multistoreyed building complex, wherefrom he is running Educational Institutions i.e. B.Ed/ETT College, Para Medical Institution, B. N. School and ATM of J&K Bank. The complaint made by the petitioner stands investigated and several compliance reports have been filed.

2. The following objections/ status reports have filed by the respondents:

- i) Compliance report dated 9th October, 2015 by the State Vigilance Organization (page 31)
- ii) Report dated 1st June, 2016 by the SSP Vigilance Organization (page 35).
- iii) Report dated 29th July, 2016 by the SSP Vigilance Organization, Jammu (page 47)
- iv) Report dated 9th December, 2016 by the respondent No. 5 (page 63)
- v) Status report dated 28th December, 2016 SSP Vigilance Organization, Jammu (page 84)
- vi) Status report dated 30th January, 2017 (page 100)
- vii) Compliance report dated nil by the Divisional Forest Officer, Jammu (page 111)
- viii) Compliance report dated 27th March, 2017 (page 124)

3. In the report dated 01st June, 2016 (page 35), the Sr. Superintendent of Police, Vigilance Organization, Jammu has *inter alia* stated as follows:

“..xxxx by Mst Zarina Kohli w/o A. G. Kohli through agreement to sell executed between Sarfaraz Ahmed S/o Mian Bashir Ahmed and Mst. Zarina Kohli W/o A.G. Kohli on 03.01.2002 for 08 Kanals of land under Khasra No. 356/Min situated at Sunjwan and as per the report of Divisional Forest Officer, Jammu discussed above, Khasra No. 356 of Village Nowabad, Sunjwan is forest land, thereby substantiating the basic allegation of the complainant.

*During visual inspection of the building complex/institution, it was found that a number of Educational Institutions are being run in the building complex under probe. In addition, to these intuitions, it was found that a full fledged branch of Jammu & Kashmir Bank alongwith ATM is also located in the said complex. The matter was taken up with the concerned authorities to ascertain as to how they have entered into a rent/lease agreement with the owners of the building which has been raised on Forest land. In their reply vide No.ZOJC/Genl/732/15*2011 dated 22.09.2015, the lease deed has been executed on 17th of May, 2013 between Abdul Gani Kohli S/o Shri Feroz Din R/o 105, Channi Himmat, Jammu with Jammu & Kashmir Bank having it registered office at Corporate Headquarter, Mulana Azad Road, Srinagar and the business unit amongst others at Nowabad, Sunjwan. The lease deed has been registered with Sub Registrar, Sub Judge, Jammu and the rent @ Rs.12/- per sq. Ft has been fixed w.e.f. 02.02.2013, total carpet area measuring 2400 Sq. Ft has been rented out to the J&K Bank. The total rent paid on premises w.e.f. March 2012 to August 2015 is Rs. 9,42,300/-. Further, some loans, Car loans, term loan mortgage of Mr. A.G. Kohli and loan against term*

deposit have been availed by the owners of the Land/building in question. The banking authorities have statged that they have entered into a lease deed before the competent Court and in the lease deed, there is no mention/disclosure of the owner of the complex or any other agency that it has been built on any type of Government land. On behalf of J&K Bank, Attorney Holder Pitanjal Sharma, Executive Manger, presently posted in Zonal Office, Jammu has executed the Lease Deed.

*The enquiries conducted sofar have established that the institutions are being owned and managed by the family members of Shri Abdul Gani Kohli, **the building complex has been raised on Khasra No. 356 of Village Nowabad, Sunjwan as per the records submitted by the owners to the various authorities and as per the report of Forest Department i.e. DFO Demarcation, Jammu Khasra No. 356 is forest land thereby substantiating the basic allegation.** However, the revenue record are still awaited. Further, scrutiny of record i.e. the affiliation files of these Institutions, record pertaining to permission of Para Medical Institution and awaited Revenue records will be conducted to work out the violations being done by the owners, management and Officers/Officials of concerned departments, who have been involved in facilitating the establishment of such institutions in forest land in violation of law xxxx. ”*

(Emphasis supplied)

4. Our attention is also drawn to the report filed by Shabir Ahmad Malik, Sr. Superintendent of Police, Vigilance Organization, Jammu on 27th March, 2017 (page 124), wherein it has been stated that the land was not a forest land but was a public land. It is the further submission of Mr. Ankur Sharma that an effort is being made to facilitate the encroachment and appropriation by the respondent No. 4 by changing its status from forest land to state land.

5. Even if, the report of the Sr. Superintendent of Police land in question was a state land was to be accepted, it is shocking that he has not only permitted continuation of the encroachment but enable buildings to come up on State land without having taken any action for the same.

6. We also note that this writ petition has not been listed by the Registry after 19th April, 2017, despite specific direction to list the same on 26th April, 2017. We shall deal with this lapse at a later stage.

7. The Registrar Judicial shall immediately look into this aspect and scrutinize the record of the High Court to ensure that all matters, which are not being listed despite specific directions, are listed forthwith.

8. Prayer made in the CMP No. 48/2014 in PIL No. 19/2011 referring the matter to CBI for conducting an inquiry. The prayer in the application certainly deserved to be warranted in the facts and circumstances of the case. However, before passing effective orders, more information as has been directed today, is required.

9. Mr. Ankush Sharma, the petitioner, who appears in person submits that he has not received copy of the report.

10. We do not understand as to how the Registry has accepted this report without service of advance copy to the other side.

11. The Registry is directed to remain careful in future.

12. Another important aspect which is required to be gone into as to how no objections stand granted to run educational institutions and banking facilities in the property constructed on the land which has been encroached. The fact that forest land has been registered in the name of private parties is also illegal and a serious matter.

13. In view of the above, we direct as follows:

- (i) Let a copy of entire paper book including the writ petition and all the status reports on record be made available to the Divisional Commissioner, Jammu as well as the Principal Chief Conservator of Forests. They shall scrutinize the entire records and a report be submitted to us after careful and complete scrutiny, not only the court record and status reports but also the relevant records and documents. These officers shall cause a physical inspection of the land to be undertaken and, if necessary, fresh demarcation be conducted by an officer not below the rank of Deputy Commissioner.
- (ii) A report regarding the land in question shall be filed by them before us within four weeks from today.
- (iii) Issue notice to the Secretary, Board of School Education, Jammu returnable on 12th March 2020 to explain as to how the ETT institution has been permitted to be run on public/forest land.
- (iv) Issue notice to the Secretary, Revenue Department as to how the forest land has been registered in the name of private persons.
- (v) A copy of this compliance report as well as complete list of beneficiaries, which has been filed be made available to Mr. Ankush Sharma, within three days from today.

Copy of this order be furnished to the learned counsel for the parties under the seal and signatures of the Joint Registrar-cum-Bench Secretary.

(TASHI RABSTAN)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

Jammu
20.02.2020
Karam Chand