



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

OWP No. 1625/2020

CM No.827/2025

CM No. 4023/2025

CM No. 5543/2020

Reserved On: 13.02.2026

Pronounced On: 24.02.2026

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Whether the operative part or

*full judgment is pronounced-**Full Judgment***

Ch. Mohd. Sadiq

S/O Munshi Khan,

R/O H. No. 425,

Digiana Ashram, Jammu

...Petitioner(s)

Through: Mr. Pranav Kohli, Sr. Adv. with
Mr. Farhan Mirza, Adv.

Vs

01. **Union of India**, through
Ministry of Housing and Urban Affairs
Nirman Bhavan, Maulana Azad Road
New Delhi-110011.
02. Director General,
Central Public Works Department,
New Delhi.
03. Union Territory of Jammu & Kashmir through
Commissioner/Secretary to Government,
Revenue Department,
Civil Secretariat, Srinagar.
04. Deputy Commissioner/District Collector,
Jammu.
05. Chief Engineer,
Public Works Department, Jammu
06. Regional Officer,
National Highway Authority of India,
1st Floor, House No.315, Sector-1,
Channi Himmat, Jammu-180015
07. Project Director, PIU,
National Highway Authority of India,
1st Floor, H. No.315, Sector -1,
Channi Himmat, Jammu-180015.

..... Respondent(s)



Through: Mr. Vishal Sharma, DSGI for R-1 & 2.
Ms. Nisha Kangotra, Adv vice
Mrs. Monika Kohli, Sr. AAG for R- 3 & 4.
Ms. Pallavi Sharma, AC vice
Mr. Ravinder Gupta, AAG for R-5.
Mr. Sunny Mahajan, Adv. for R- 6 & 7.
Mr. Gagandeep Singh, Patwari Halqa Digiana.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

01. Petitioner, through the medium of this petition, has, inter alia, prayed for the following reliefs:

- (a) *Mandamus commanding upon the respondents to pay compensation to the petitioner in lieu of the Land measuring 02 Kanals falling under Khasra No.299 (old) situated at Village Digiana, Jammu which been utilised by the Respondents CPWD for the purpose of future widening of the Jammu-Pathankot National Highway and was occupied by CPWD in 1957 without conducting acquisition proceedings / without following due process of law.”*
- (b) *Mandamus commanding and directing the respondents No.4 to place on record the acquisition proceedings conducted with respect to the land measuring 02 Kanal falling under Khasra No.299 (old) and Award, if any.*
- (c) *Mandamus commanding the respondents to assess the compensation alongwith interest w.e.f. the date of its occupation till the date of its realization alongwith interest.*
- (d) *Such other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the given facts and circumstances may kindly be passed in favour of the petitioner as against the respondents.”*

02. Facts, as pleaded by the petitioner, which give rise to filing of this petition, are that the predecessor in interest of the petitioner herein was the



owner in possession of a piece of land measuring 2 kanal 11 marla falling under Khasra No.299 (old) situated at Village Digiana, Jammu; that out of said land, land measuring 11 marlas was sold by the father of the petitioner to one Makhan Singh; that the rest of the land measuring 2 kanal falling in the said Khasra No.299 (old) situated at Village Digiana remained in possession with the father of the petitioner; that the said land was recorded as occupied by CPWD without initiating acquisition proceedings for the purposes of future widening of Jammu-Pathankot National Highway as is clear from the revenue record for the year 2005, the said land has been shown to have been occupied by the CPWD, whereas the owner of the said land were shown Mohd. Din and Ors. i.e. the fore-fathers of the petitioner; that on approaching the revenue authorities for payment of compensation in lieu of the land acquired by the respondents for construction/widening of the road; i.e. that the land measuring 2 kanal under the said Khasra number was allowed to continue with the CPWD as per entry Khariief 1957; that the petitioner made an application before the Deputy Commissioner (Collector), Jammu regarding compensation of the land measuring 02 kanals, in which some reports were called and which made it abundantly clear that the land of the petitioner has been utilized, for widening of the National Highway by CPWD without initiating any acquisition proceedings and without paying any compensation to the petitioner. Hence the present petition is filed by the petitioner praying for the relief enumerated in para 1 of this judgment.

03. The petitioner, has assailed the action of the respondents in utilizing the land of his predecessors, without proper acquisition in accordance with law, on the following grounds:



- A. *That the respondents have occupied the land of the forefathers of petitioner measuring 02 kanal falling under Khasra No.299 (old) situate at Village Digiana, Jammu without any authority under law. At best, the respondents could have resorted to compulsory acquisition but that too a right to have compensation at the present market value is an indivisible right, which cannot be denied by the respondents. The petitioner has a legal right in terms of Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013. The compensation of land under the Act is governed by Section 26 of the Act, whereas, the market Value is determined in terms of notification no.DCJ/SQ/Stamp-Duty/2019-20/3531-69 dated 31.12.2019 and as per the same the correct market value of land is thus, required to be paid to the petitioner alongwith interest for the unpaid amount w.e.f. the actual taking over and utilization of the land by the respondents.*
- B. *That the respondents have not issued any notice for acquisition as warranted in lieu of the land of the petitioner of the petitioner occupied by the Respondents CPWD of their own.*
- C. *That the petitioner has been moving from pillar to post to know about the process adopted by the respondents while occupying the land of the petitioners, and has come to know that the land measuring 2 kanal is occupied by the respondent CPWD, but the entry in the revenue record is silent about the competency/authority of the Respondent CPWD to occupy the land of the petitioner as it is nowhere reflected in the revenue entry that the land is occupied after acquisition proceedings, that too after payment of any compensation or not.*
- D. *That the action of the respondents is against the principles of natural justice.*



E. That the action of the respondents is also violative of Fundamental Rights of the petitioner as in the erstwhile State of J&K, the right to property was a fundamental right. The land has been acquired since long, hence this right of the petitioner has been violated.”

Objections on behalf of respondents No.1 & 2-CPWD.

04. In the objections filed on behalf of respondents 1 and 2, it is contended that the Deputy Director (P) Public Works Department vide communication dated 11.10.2010 conveyed the approval of the Administrative Department, for taking over the road Kunjwani Bypass to Satwari Chowk from CPWD by the Chief Engineer, R&B Jammu for improvement and widening/four lane of the road, since then the aforesaid road is under the possession, control and management of Chief Engineer, PW(R&B) Jammu; that admitted case of the petitioner is that land of the petitioner was kept for future widening of the road and so after taking over the said road by the Chief Engineer, R&B Jammu from CPWD, the CPWD has nothing to do with the land of the petitioner, as such, the instant petition be dismissed accordingly.

Objections on behalf of Respondent No. 4

05. On 19.10.2023, reply to the writ petition came to be filed on behalf of Deputy Commissioner, Jammu. Paras 2 to 6 of the said reply being relevant, are reproduced hereinbelow:

“2. that in reply to para no.2-4, it is submitted that the revenue records with respect to land measuring 02 kanals bearing Kh. No. 299 old situated at Village Digiana Jammu has been verified and it has been observed that the said land has been occupied by the Central Public Works Department but the predecessor in interest of the petitioner has been recorded as owner of the land.



However, neither any entry nor any record with respect to the acquisition of the said land has been found as such vide communication bearing no.DCJ/SQ/MISC/2022-23/3496-97 dated 10.09.2022 the Central Public Works Department was requested to place on record the acquisition proceedings, if any, conducted with respect to the land in question or furnish the record depicting that the predecessor in interest of the petitioner have been compensated in any manner but till date no information has been received.

3. That in reply to para no.5-6, it is submitted that there is no entry of acquisition of the land in question in the revenue record as such the question of payment of compensation does not arise.
4. That in reply to para no.7, it is submitted that the petitioner in para no.2 of the petition has himself stated that he is owner in possession of land measuring 2K 11 M in kh. No. 299 old situated at village Digiana Jammu out of which his father has sold 11 marlas of land, however, in the para under reply the petitioner is stating that 2K of the land has been utilized by the respondents for widening of land and 09 M of the land is in possession of the petitioner. Both the averments are in itself contrary to each other.
5. That the contents of para no.8 is a matter of record.
6. That in reply to para no.9, it is submitted that as per the revenue record, the entry of the CPWD has occurred in the year 1971 and not in the year 1957.”

Objections on behalf of respondent No.5- Chief Engineer, PWD, Jammu

06. Objections stand filed on behalf of respondent no.5 contending, inter alia, that the writ petition is not maintainable qua respondent no.5; that the road in question for which land of the petitioner was allegedly taken over was in



existence prior to year 1947 and the road was being maintained by Central Public Works Department and it was only in year 2010 that the road in question was handed over to respondent no.5 and execution of work started in Dec. 2010; that the stretch of land i.e. Satwari-Kunjwani road has again been handed over to National Highway Authority of India since November 2021 and further up-gradation of the said road to six laning is in progress by NHAI; that the road in question was in occupation/possession of CPWD since 1957, which came to be handed over to respondent no.5- PWD in the year 2010 and now again handed over to NHAI since 2021; that the land of the petitioner has not been utilized by PWD and therefore, there is no question of compensation against respondent no.5. Lastly, it is prayed that writ petition of the petitioner be dismissed as the writ petition is not maintainable against respondent no. 5.

Objections on behalf of respondent nos.6&7- NHAI

07. Regional Officer, RO Jammu, National Highway Authority of India and Project Director, PIU, NHAI who came to be impleaded as respondents 6 and 7 respectively in this writ petition, vide order passed by this court on 18.02.2025 in the application moved by the applicant-petitioner, filed reply on behalf of NHAI that the petitioner has not approached the court with clean hands and has suppressed material facts that land in question has been used for Highway was handed over to the National Highway Authority of India by the PWD (R&B) Sub Division, Digiana, Jammu, which was earlier being maintained by CPWD as per the records and the entire land which has been utilized by the NHAI is shown as State land, therefore, the writ petition deserves to be dismissed on this ground alone; that the petitioner has raised the disputed questions of facts as the claim of the petitioner as regards ownership of the land in question cannot be adjudicated



upon without evidence being led by the parties, for the adjudication of which this court cannot exercise its extra-ordinary writ jurisdiction, therefore, the writ petition requires to be dismissed qua the answering respondents 6 and 7.

08. This court on 19.10.2020 directed respondent no.4- Deputy Commissioner, Jammu to file report with regard to acquisition of the land measuring 2 kanal falling in Khasra No.299 old situated at Village Digiana Jammu which is subject matter of this writ petition. Pursuant thereto, Deputy Commissioner, Jammu filed Action Taken Report on 10.09.2022, relevant part of the said report is reproduced as below:

“2. That the answering respondent has verified the revenue record of land measuring 02 kanal falling in Khasra No.299 old situated at Village Digiana, Jammu and it has been found that the land has been occupied by the Central Public Works Department whereas the predecessor-in-interest of the petitioner has been recorded as the owner of the land. Now vide Letter No.DCJ/SQ/MISC/2022-23/3496-97 dated 10.09.2022 the answering respondent has written to the intending department i.e. Central Public Works Department to place on record the acquisition proceedings conducted, if any with respect to the said land and to furnish the record depicting that the predecessor-in-interest of the petitioner have been compensated in any manner thereof with respect to land measuring 2 kanal falling in Khasra No.299 old situated at Village Digiana, Jammu.”

09. Mr. Kohli, learned Sr. counsel appearing for the petitioner submits that a parcel of land measuring 2 kanal comprised in khasra No.299 old in village Digiana, owned by the petitioner's father- Munshi Khan came to be appropriated for widening of Jammu-Pathankot National Highway in 1957 without payment of



any compensation or acquisition; that mutation No.2894/Jeem dated 31.12.2015 came to be attested by Naib-Tehsildar, Digiana, on the basis of inheritance of Munshi Khan (co-sharer) taking place in favour of his sons – Mohd. Sadiq (petitioner herein), Mohd. Latif & Mohd. Yousaf and daughters – Rashida Begum, Maqbool Begum, Naseer Begum & Mumtaz Akhter. Lastly, it is prayed that the writ petition be allowed by directing the respondents to pay just and fair compensation to the petitioner for the land which is in possession of the respondents.

10. The learned counsel for the respondents, in tune with the replies filed on behalf of all the respondents, argued that as per revenue record the land in question had gone to the possession of Central Public Works Department (CPWD) in the fifties or sixties and since then it has changed hands from State Public Works Department to National Highway Authority of India who is utilizing the land for construction of Delhi-Amritsar-Katra six lane Expressway and the petitioner has now awoken from his deep slumber to seek compensation. It was prayed to dismiss the petition, on the basis of delay and laches.

11. Heard learned counsel for the parties at length, perused the file, and considered the matter.

12. On the basis of the record available on file and as pleaded by the petitioner, and also admitted by the Revenue authorities which is evident from the report filed by respondent No. 5- Deputy Commissioner, Jammu that the petitioner's father namely Munshi Khan was owner in possession of a land measuring 2 kanals and 11 marlas situated at Digiana Jammu of which he sold 11 marlas to one Makhan Singh and the rest of the two kanals of land was used and occupied by the Central Public Works Department for the construction and maintenance of



Jammu-Kathua National Highway which was later transferred to the State Public Works Department who handed over the same to National Highway Authority of India which had developed a highway by making it four lanes initially and that now has been a part of six lane Delhi-Amristar-Katra Expressway.

13. As per the report of Deputy Commissioner, Jammu which he had filed on the basis of the revenue reports, no entry with regard to payment of compensation or the mode of transfer of land in question in favour of the Central Public Works Department has been recorded and that the Central Public Works Department on being taken up the matter had also not responded. The other respondents, Chief Engineer, Public Works Department, Jammu respondent-5, had stated that the road was being maintained by CPWD since 1947 and in the year 2010, the road in question was handed over to State Public Works Department, however, again this road was handed over to National Highway Authority of India, in the month of November 2021 to further upgrade the same to six-lane Expressway by NHAI. He has admitted that the land in question had remained in possession of CPWD since 1957 which was handed over to State PWD in 2010 and ultimately to NHAI since November 2021.

14. The Central Public Works Department (CPWD) in its reply has not stated anything as to how the petitioner's land came to be transferred to CPWD, before it was transferred to J&K PWD, which means that there was no document with regard to acquisition of the land in question or payment of compensation. The respondent-NHAI has also not refuted the contentions made in the petition except that the petitioner had suppressed the material facts and that the mixed questions of fact and law are involved which cannot be decided under the writ jurisdiction.



15. It has thus come to fore that the land measuring two kanals comprising of khasra no. 299 old in Village Digiana owned by the forefathers of the petitioner namely Mohd. Din and others; and that the petitioner and his brothers Mohd. Latief and Mohd. Yousuf and their sisters Rashida Begum, Maqbool Begum, Naseer Begum & Mumtaz Akhter had an interest in the land having been inherited from their father Late Munshi Khan. Admittedly, the land in question had been used initially by CPWD, then by State PWD and now being used by the National Highway Authority of India, without acquiring the same in terms of the law applicable for land acquisition and without payment of compensation to the rightful owners.

16. In case titled *Hari Krishna Mandir Trust vs. State of Maharashtra & others*, (2020) 9 Supreme Court Cases 356, the Hon'ble Supreme Court in Para 96 observed as under:-

“96. The right to property may not be a fundamental right any longer, but it is still a constitutional right under Article 300A and a human right as observed by this Court in *Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and Others*. In view of the mandate of Article 300A of the Constitution of India, no person is to be deprived of his property save by the authority of law. The appellant trust cannot be deprived of its property save in accordance with law.”

17. The Hon'ble Supreme Court again in case titled *Vidya Devi Vs. State of Himachal Pradesh and Ors*, (2020) 2 SCC 569 held in Paragraphs 12.1 to 12.6 observed as under:-

“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, 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.6, this Court recognized the right to property as a basic human right in the following words:

“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 :

“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)

18. From the facts and circumstances of the case, and as per the report of the Deputy Commissioner, Jammu, the petitioner’s land measuring 02 kanal comprising of Survey No.299 (old) of Village Digiana, Jammu was taken over initially by Central Public Works Department in the year 1957, which later on was handed over to the respondent J&K PWD in the year 2010 and finally to NHAI in the year 2021. It is very strange that the land owners including the petitioner, were deprived of their landed estate without resorting to the law of the land i.e., either to acquire land in terms of Land Acquisition Act which was in vogue at that point of time or through private negotiations. The respondents are found to have been in possession of the land, for the last more than 70 years now, which is not permissible for the simple reason that right to hold property was initially a fundamental right, as per Constitution of India as well as the Constitution of J&K and even now is also a constitutional and human right under Article 300-A of the Constitution of India. The land owners cannot be divested of their property without following due course of law.

19. Having regard to the discussion made hereinabove, aforesaid reasons, and with a view to put the controversy involved in this petition to quietus, the writ petition is allowed, with the following directions:

- 1.** The respondent- National Highway Authority of India (NHAI), is directed to submit an indent for acquisition of the land in question to the Collector/Competent Authority, or in the alternative, restore the possession of the subject land to the land owners, within a



period of six weeks from the date a certified copy of this judgment is made available to them.

2. The Collector /Competent Authority on receipt of indent from NHAI shall proceed in accordance with the applicable law pertaining to acquisition of land and conclude the same, in accordance with timeline provided under the relevant statute.

20. Petition, is thus, **disposed of as allowed**, along with connected application (s) with the aforesaid directions.

(M.A Chowdhary)
Judge

Jammu
24.02.2026
Raj Kumar

