



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

Reserved on: 21.04.2026
Pronounced on: 06.05.2026
Uploaded on: 07.05.2026

Whether the operative part or
full judgment is pronounced: Full

**LPA No. 326/2025
c/w LPA 324/2025**

Radha KrishenKoul and another

...APPELLANT(S)

Through: Mr. Aijaz Ahmad Chesti, Advocate

Vs.

UT of J&K and others

...RESPONDENT(S)

Through: Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel

CORAM: -

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

J U D G M E N T

Per Sanjay Parihar, J

1. The present two Letters Patent Appeals arise out of the judgment dated 15.12.2025 passed by the writ court in WP(C) No. 2581/2021, connected with WP(C) No. 202/2021, whereby the writ petitions were dismissed on the ground that the appellants had indulged in suppression of facts and abuse of process of law. However, the court, taking a lenient view, refrained from imposing exemplary costs. The writ court held that the relief sought by the appellants of quashing of Order No. Rev/NDK/81/69-



II dated 19.09.2005 or directing consideration of their case under Government Order No. Rev/NDK/248 of 1981 dated 17.08.1981, was legally untenable, as the appellants failed to establish their eligibility under the said Government Order. Consequently, they could not claim parity with other leaseholders governed by a distinct statutory framework. This finding has been challenged in the present appeals, primarily on the ground that the writ court erred in holding that the lease had expired, whereas, according to the appellants, it stood extended from time to time under the Government Order of 1981.

2. The appellants contend that they consistently pursued regularization of their case under the Government Order dated 17.08.1981, but the respondents, without deciding their claim, resorted to usage of the Roshni Act of 2001, leading to the issuance of the impugned order dated 19.09.2005. It is argued that the respondents had no authority to unilaterally shift their case to the Act of 2001, particularly when the said Act had already been rolled back by the Government. The appellants assert that they had, from the outset, sought regularization strictly under the 1981 policy. They further submit that the writ court erred in treating them differently from similarly situated leaseholders whose cases had been regularized under the same Government Order, despite comparable circumstances and recommendations by the Nazool Department.
3. It is also submitted that the writ court failed to appreciate the factual matrix and legal issues in their proper perspective and dismissed the petitions on untenable grounds. The appellants' case before the writ court was that the land measuring 5 Marlas, along with a structure situated at



Sheikh Bagh, Srinagar, originally belonged to Pandit Halдар Joo and Pandit Tarachand and was transferred to them vide Government Order No. D.K. 68 of 1957 dated 06.09.1957. The lease initially expired in 1974, after which the appellants applied for renewal and conferment of proprietary rights. The lease was subsequently renewed from 01.04.1974 through Government Order dated 15.02.1982 for another 40 years. In the meantime, the Government issued Order No. Rev/NDK/248 of 1981 pursuant to Cabinet Decisions dated 22.06.1981 and 17.08.1981 for conferment of proprietary rights, and the appellants obtained the requisite No Objection Certificate on 13.08.1981. Despite recommendations from the Assistant Commissioner Nazool and the Divisional Commissioner, no action was taken to regularize the land under the said policy.

4. It was only in 2005 that a portion of the land, 3 Marlas and 269 square feet, was regularized under the J&K State Lands (Vesting of Ownership to the Occupants) Act, 2001“Roshni Act”, upon payment at the rate of Rs. 80 lakhs per Kanal. The appellants maintain that they were eligible for regularization under the 1981 Government Order and had fulfilled all requirements, including obtaining the necessary NOC from the Srinagar Development Authority. They allege that, despite this, they were subjected to prolonged inaction, while similarly situated cases, such as that of M/s Ahdoos Restaurant, were regularized under comparable Government orders at significantly lower rates. The appellants further state that due to militancy, they were compelled to leave the Valley after one of them survived a life-threatening attack. Upon restoration of normalcy, they resumed efforts for regularization of their leasehold



property and expressed willingness to pay market rates ranging from Rs.15 lakhs to Rs.30 lakhs per Kanal, as recommended by the Nazool Department.

5. Despite their consistent request for regularization under the 1981 policy, the respondents allegedly forced their case under the Roshni scheme, which had already been shelved, thereby exposing them to the threat of eviction. Aggrieved by this action and denial of parity with similarly situated cases, the appellants approached the writ court seeking quashing of the impugned order and enforcement of their rights under the 1981 Government Order.
6. It is primarily argued by learned counsel for the appellants that the finding of the writ court, to the effect that the provisions of the Roshni Act were applicable and that, upon the said Act having been declared invalid, the appellants would be treated as unauthorized occupants of Nazool land, is contrary to the factual and legal position. On the other hand, the respondents do not dispute that the allotment in question was governed by orders predating the enactment of the Roshni Act of 2001. However, they contend that since the appellants failed to deposit the requisite amount as contemplated under the Government Order of 1981, it was the appellants themselves who sought regularization under the Roshni Act.
7. It is also relevant that, before the writ court, the appellants had challenged Notice No. ACN/R/L/85 dated 27.10.2021 issued by the Estate Officer, calling upon them to show cause as to why they should not be evicted from the demised premises on the ground that the lease had expired in 2014 and was not renewed. The notice further referred to the fact that the



appellants had earlier sought regularization under the Roshni Act of 2001, which subsequently came to be struck down in *S.K. Bhalla's case*. The appellants have emphasized that they had deposited an amount of Rs. 30 lakhs per kanals, being the prevailing market rate at the relevant time, but their case was erroneously processed under the Roshni framework instead of under the Government Order of 1981.

8. We have heard both counsels and examined the record of writ court. It is an admitted position that the land in question is Nazool land. The lease, which was originally due to expire on 01.04.1974, was extended for a further period of 40 years on enhanced ground rent at the rate of 150% for commercial purposes, vide Government Order No. 43 of 1982 dated 15.02.1982, governed by the Land Grants Rules of 1960. While the extension of the aforesaid lease was under process, the Government, in terms of Order No. Rev/NDK/248 of 1981 dated 17.08.1981, granted an option to Nazool landholders to acquire proprietary rights over the land upon payment of a price equivalent to one-half of the prevailing market value at the current rate. The appellants also applied for conferment of proprietary rights pursuant to the said policy.
9. It appears that discussions ensued between the appellants and the respondents regarding the determination and fixation of the market value. However, in the year 1986, while the appellants' case was still pending consideration, the Government, acting under the aforesaid order dated 17.08.1981, conferred ownership rights upon a similarly situated person, namely Ghulam Hassan Bhat of Ahdoos Restaurant, who was in possession of land measuring 2 kanals, 3 Marlas, and 213 square feet. The



said person was granted proprietary rights at the rate of ₹3.80 lakhs per Kanal. The land so allotted was also situated in the vicinity of the appellants' land, which continued to remain in their possession, and in respect whereof the appellants had sought similar treatment.

10. It is primarily contended by learned counsel for the appellants that the finding recorded by the Writ Court, that the provisions of the Roshni Act were applicable and, upon the said Act having outlived its utility, the appellants could be deemed unauthorized occupants of Nazool land, is contrary to the factual matrix on record. The respondents, on the other hand, do not dispute that the allotment in the present case was governed by orders issued prior to the coming into force of the Roshni Act, 2001. They, however, assert that since the appellants did not deposit the price as envisaged under the Government Order of 1981, it was the appellants themselves who sought regularization under the Roshni Act.
11. During the course of hearing, the respondents failed to demonstrate that the appellants had ever sought regularization of their lease under the Act of 2001. On the contrary, the material on record reveals that the appellants were entitled to the benefit of the Government Order of 1981, as the land in question was Nazool land held in permissive possession since 1957 or earlier, with the lease having been periodically extended until 2014. The record further indicates that when, in 1986, a similarly situated person was granted the benefit of the Government Order of 1981, the appellants also sought parity in treatment. The respondents themselves had recommended that, given the commercial nature of the Kothibagh area and the enhanced rent structure, the appellants' case warranted



consideration under the said Government Order. At one stage, the Assistant Commissioner Nazool recommended a rate of ₹15 lakhs per Kanal, which was subsequently revised to ₹30 lakhs per Kanal by the Divisional Commissioner, Srinagar, and the appellants claim to have deposited the said amount. Despite this, the respondents have failed to justify why similarly situated persons were treated more favourably, particularly when an individual possessing more than two kanals of land was charged only ₹3.80 lakhs per kanals, while the appellants, for a much smaller extent of five Marlas, were required to pay ₹30 lakhs per Kanal. Even after expressing willingness to comply with the higher rate, the appellants' case remained pending without any resolution.

12. The record further reflects that after the enactment of the Roshni Act, 2001, numerous cases involving regularization of Nazool and other State lands were processed under the said Act. However, the appellants' case was fundamentally distinct, as they were not unauthorized occupants but lawful lessees in continuous permissive possession under valid lease documents extended up to 2014. At best, it may be inferred that the appellants, in their persistent pursuit of ownership rights, may have acquiesced to consideration under the 2001 Act; however, it was incumbent upon the respondents to determine the appropriate legal framework, whether under the Government Order of 1981 or the Act of 2001. Significantly, there is no material on record to suggest that the appellants had expressly sought conferment of ownership rights under the 2001 Act. Therefore, the respondents cannot retrospectively justify their actions by asserting that the appellants' case was rightly considered under



that Act. Given that the appellants were continuously governed by the Government Orders of 1957 and 1981, and had even deposited the amount of ₹30 lakhs per Kanal as proposed by the Divisional Commissioner, the respondents were under a corresponding obligation to extend the benefit of the 1981 Order, as was done in the case of Hotel Ahdoos in 1986. The failure to do so, despite repeated representations by the appellants, reflects arbitrary and unjustified administrative action.

13. The Writ Court, it appears, fell into error by treating the appellants' case as one falling within the ambit of the Act of 2001, despite the clear factual position that it ought to have been considered under the Government Order of 1981. It is not even the respondents' case that, upon expiry of the lease in 2014, the appellants sought regularization under the 1981 Order; rather, the appellants had consistently pursued conferment of ownership rights in parity with similarly situated entities such as Hotel Ahdoos. The denial of such consideration, without any rational basis, constitutes a clear violation of Article 14 of the Constitution, as equals were treated unequally. The Writ Court further erred in concluding that the appellants had suppressed material facts by not disclosing the filing of earlier writ petitions, namely OWP No. 2336/2018 and OWP No. 383/2019. A perusal of these petitions reveals that they pertained to entirely distinct issues, one relating to a demolition order issued by the Srinagar Municipal Corporation, and the other concerning deposit of rent for part of the demised premises. Neither of these proceedings addressed the issue raised in the present writ petition, namely the appellants' entitlement to ownership rights under the Government Order of 1981. The finding of



suppression of facts is thus unsustainable and appears to stem from a misapprehension of the nature of reliefs sought in the earlier petitions.

14. The central question remains whether the appellants could be characterized as unauthorized occupants so as to disentitle them to relief under Article 226. The record unequivocally establishes that the appellants were in lawful possession of the land throughout. The Roshni Act, 2001, formally known as the Jammu and Kashmir State Land (Vesting of Ownership to the Occupants) Act, 2001, was enacted to confer ownership rights upon occupants of State land with the objective of generating revenue for power projects. The definition of “State land” under Section 2(h) and the provisions of Sections 4(1-A) and 8 clearly indicate that the Act was intended to benefit persons in long-standing possession, whether permissive or otherwise, by converting such possession into freehold ownership subject to prescribed conditions. Therefore, even within the framework of the Act of 2001, the appellants’ longstanding lawful possession would not render them unauthorized occupants.

15. This Court, in its judgment in ***Prof. S.K. Bhalla vs. State of J&K and Ors., pronounced on 09.10.2020***, held that the Act of 2001 was enacted in a manner that permitted vesting of public trust land in favour of trespassers, which was found to be constitutionally impermissible. However, in the present case, the respondents were clearly in error in treating the appellants’ case under the framework of the Act of 2001, particularly when the appellants had consistently asserted that their claim ought to be considered under the Government Order of 1981. At the time



when the Act of 2001 came into force, the appellants were not unauthorized occupants but lawful lessees holding Nazool land measuring 05 Marlas, with their lease having been periodically extended up to 2014. It further emerges from the record that the respondents had conferred partial ownership rights upon the appellants under the Act of 2001 to the extent of 03 Marlas and 269 sq. ft., despite the fact that the appellants had already deposited ₹30 lakhs per Kanal in terms of the recommendations of the Divisional Commissioner, Srinagar, well before the enactment of the said Act. With the Act of 2001 subsequently being struck down by this Court, the appellants were unjustly exposed to adverse consequences, including eviction proceedings initiated vide notice dated 27.10.2021, treating them as unauthorized occupants. This action was manifestly erroneous, as the appellants' possession had always been permissive and governed by valid lease arrangements under successive Government orders.

16. On a proper appreciation of the factual position, it becomes evident that the appellants were neither unauthorized occupants nor encroachers upon State land. The land in question, belonging to the Nazool Department, had been lawfully leased to the appellants, who were entitled to seek conferment of proprietorship rights upon payment of one-half of the market value in terms of the Government Order of 1981. The expiry of the lease in 2014, coupled with the subsequent striking down of the Act of 2001, placed the appellants in a precarious position due to the respondents' erroneous application of the said Act. The issuance of eviction notice dated 27.10.2021, branding the appellants as unauthorized



occupants, was therefore wholly unjustified and contrary to the factual and legal position. The appellants had never sought ownership rights under the Act of 2001 but had consistently relied upon the Government Order of 1981, under which they had already deposited ₹30 lakhs per Kanal as the applicable market rate, as proposed by the Divisional Commissioner, Srinagar, vide order dated 29.08.2000.

17. The Writ Court, with respect, erred in conflating the appellants' case with that of unauthorized occupants who had been wrongly granted benefits under the Act of 2001. The appellants' case, in fact, stood on an entirely different footing and was squarely governed by the Government Order of 1981. The appellants had also pleaded compelling circumstances, including displacement due to militancy and personal hardship, which affected their ability to continuously pursue their claim. In this backdrop, the finding of suppression of facts by the Writ Court is unsustainable. The earlier writ petitions were based on distinct causes of action and their withdrawal does not operate as a bar to the maintainability of the present petition. While the principle underlying Order XXIII Rule 1 CPC may apply to writ proceedings, its applicability is limited to cases involving identical causes of action. In the present case, the earlier petitions related to demolition and rent issues, whereas the present petition concerns the legality of the respondents' action in denying ownership rights under the Government Order of 1981. Therefore, the bar of maintainability does not arise. It is settled law that suppression must relate to material facts having a direct bearing on the relief sought. Reliance in this regard may be placed on *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar*, 2004 7 SCC



166, wherein the Hon'ble Supreme Court held that only suppression of *material facts* disentitles a litigant from relief. Similarly, in ***Arunima Baruah v. Union of India Civil Appeal 2205 of 2007, D.O.D 27.04.2007***, it was held that suppression must be deliberate and material to the case. The Writ Court's conclusion, therefore, is based on a misapplication of settled principles.

18. It is further submitted that even assuming *arguendo* that the appellants' case was processed under the Roshni Act, the respondents cannot take advantage of their own wrong. The doctrine of legitimate expectation squarely applies, as the appellants had a reasonable expectation that their case would be considered under the 1981 policy, especially in light of recommendations made by competent authorities. The Hon'ble Supreme Court in ***Navjyoti Coop. Group Housing Society v. Union of India, 1992 4 SCC 477***, recognized that consistent past practice gives rise to legitimate expectation, which cannot be defeated arbitrarily. The prolonged inaction on part of the respondents, despite deposit of ₹30 lakhs per Kanal by the appellants, further strengthens their claim. Administrative authorities are bound to act within a reasonable time, and failure to do so renders their action arbitrary. The principle that State cannot act arbitrarily in contractual or quasi-contractual matters has been reiterated in ***ABL International Ltd. v. Export Credit Guarantee Corporation of India, AIR Online 2003 SC 700***.

19. In view of the foregoing discussion, the appeal deserves to succeed. The judgment of the Writ Court is accordingly set aside. The respondents are directed to extend to the appellants the same treatment as was accorded to



Hotel Ahdoos under the Government Order of 1981 and to regularize the leasehold premises measuring 05 marls at Kothibagh in terms of the said Government Order, which needful be done within three months of the receipt of copy of this order.

(SANJAY PARIHAR) (SANJEEV KUMAR)
JUDGE JUDGE

Srinagar
06.05.2026
N Ahmad

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

