

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

**WP(C) No. 21/2024
CM No. 40/2024
CM No. 6562/2024
CM No. 7294/2024**

Reserved on: 01.06.2026.
Pronounced on: 04 .06.2026
Uploaded on:04 .06.2026
Whether operative part or full
Judgment has been pronounced: **Full**

- 1. Mohd Sultan Dar**
- 2. Hamidullah Dar (Both Sons of Mst. Zaina D/o Gh. Rasool Beigh)**
- 3. Mst. Hajira D/o Gh. Ahmad Beigh**

All residents of Village Khrewan Lassipora, Tehsil Qaimoh, District Kulgam.

.....Petitioner(s)

Through:

Mr. H. Furrahi, Advocate

Versus

- 1. UT of Jammu & Kashmir through Commissioner/ Secretary to Govt, Rural Development Department, Civil Secretariat, Srinagar/Jammu.**
- 2. Director, Rural Development Department, Srinagar.**
- 3. Additional District Development Commissioner for District Kulgam.**
- 3. Assistant Commissioner Development for District Kulgam**
- 4. Tehsildar, Tehsil Qaimoh District Kulgam.**
- 5. Block Development Officer Devsar, District Kulgam**

.....(official respondents)

- 6. Irfan Ahmad Magray s/o Abdul Gani Magray R/o Khrewan Lassipora District Kulgam**
- 7. Suhail Farooq Magray S/o Farooq Ahmad Magray R/o Khrewan Lassipora District Kulgam**

.....(private respondents)

Through:

Mr. Ilyas Nazir Laway, GA.

JUDGEMENT (oral)

PRAYER:

1. The petitioners, through the medium of the instant petition, have sought the following relief:

“(A)Writ of Mandamus, commanding thereby the Respondents to get the land of the petitioners demarcated for processing their claim for payment of compensation as the land in question is the property of the petitioners being agricultural land which has been used for construction of road without any compensation, notification, demarcation situated at village khirewanlassipora District Kulgam.

(B) Writ of Mandamus, commanding thereby the respondents to pay the petitioners, compensation in the sum of Rs 50 lakhs as full and final compensation for the land utilized for construction of the road by getting the land demarcated and accessing the value of said land which has been taken forcefully without notifying the same by official respondents.

(C) Writ of Mandamus, commanding thereby the respondents to pay in alternate the compensation to the petitioners as per market rate of the land utilizes for construction of road under MGNAREGA Scheme and as per directions of the Supreme Court Judgment, which will be placed before the Court at the time of argument respondents are obliged to pay to the petitioners an amount in the sum of Rs. 50.00 lacs with costs for having utilized the said land for construction of road without any cause or justification and in violation of prescribed provisions of law.

(D) Writ of Mandamus, commanding thereby the respondents to state the logic and reasons as to how land of the petitioners was utilized for construction of the road without demarcation and without notifying the same, hence proper investigation in the case be directed competent authority for having utilized the land of the petitioners for construction of the road in violation to permissible rules, norms and regulations and also the official and private respondents be directed to explain their position and

stand as to how and why norms and regulations regarding acquisition of land were bypassed by them.”

BRIEF FACTS:

2. The brief facts of the case are that the petitioners are owners in possession of a parcel of land measuring 08 Kanals and 07 Marlas situated at Village Khrewan Lassipora, Tehsil Qaimoh, District Kulgam. According to the petitioners, the said land is recorded as Abi Awal in the revenue records, and their ownership and possession are duly reflected in the revenue extracts placed on record.
3. It is borne out from the pleadings that the respondents issued a Notification dated 17.12.2023 for the construction of an ADP Road from Cheki Palpora to Khrewan being under Ministry of Rural Development under Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA). The petitioners contend that upon learning of the proposed construction, they approached the concerned Station House Officer (SHO), seeking stoppage of the work on the ground that the road was being constructed under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) Scheme without notifying the land proposed to be utilized for the project and without payment of compensation to the affected landowners.
4. The petitioners further submit that they approached the Tehsildar concerned and requested that the construction activity be halted until compensation was paid, asserting that the road was being constructed over their proprietary land without following the procedure established by law. According to the petitioners, the Tehsildar, vide endorsement

dated 25.12.2023, directed the concerned field agencies to examine the matter and take appropriate action.

5. Learned counsel for the petitioners further submits that, pursuant to an application dated 18.12.2023, the petitioners approached the Tehsildar, Qaimoh, seeking identification and demarcation of their land, which, according to them, was being utilized for construction of the road from Cheki Palpora to Khrewan. However, neither was the requested demarcation carried out nor was any action taken with regard to payment of compensation for the land allegedly utilized for the project.
6. The principal grievance projected in the instant writ petition is that the petitioners are owners of land falling under Survey No. 370 measuring 08 Kanals and 07 Marlas situated at Village Khrewan Lassipora, District Kulgam, out of which an area measuring approximately 25 Marlas has allegedly been utilized for construction of the aforesaid road without demarcation, acquisition, or adherence to the procedure prescribed under law.
7. It is further contended that the respondents were under a legal obligation to compensate the petitioners, being the owners in possession of the land allegedly utilized for the public project. According to the petitioners, not only has no compensation been paid, but even the exercise of demarcation was not undertaken despite repeated representations submitted by them and notwithstanding the directions issued by this Court vide order dated 03.12.2024. It is, therefore, urged that the action of the respondents amounts to deprivation of property otherwise than by authority of law and

consequently infringes the constitutional right guaranteed to the petitioners under Article 300-A of the Constitution of India.

8. Learned counsel further submits that the road in question has not been constructed to serve any genuine public purpose but has primarily been laid for the benefit of certain private individuals who are allegedly acting in concert with the official respondents. It is contended that the respondents have, under the guise of a public development project, appropriated the petitioners' land without following the mandatory procedure prescribed under law and without compensating the landowners. Such action, it is argued, amounts to arbitrary deprivation of property and constitutes a clear abuse of power.
9. It is also submitted that the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 mandate that no land can be utilized for public projects without adherence to the prescribed acquisition procedure and payment of fair compensation. According to learned counsel, neither the Gram Sabha nor any local authority is empowered to utilize private land for developmental works in disregard of the statutory safeguards provided under the Act. The respondents, having bypassed all mandatory requirements, are therefore liable to compensate the petitioners for the land utilized for construction of the road.
10. On the aforesaid grounds, learned counsel submits that the petitioners are entitled to a direction commanding the respondents to conduct proper demarcation of the land utilized for the project, determine the extent of land so occupied, and pay compensation to the petitioners in

accordance with the prevailing market value and the applicable statutory framework.

11. Per contra, the reply stands filed by Mr. Ilyas Nazir Laway, learned GA on behalf of the respondents, wherein it is stated that the writ petition is wholly misconceived and not maintainable in law. It is pleaded that no legal or constitutional right of the petitioners has been infringed by the answering respondents and, therefore, no cause of action has accrued warranting interference by this Court in exercise of its writ jurisdiction.

12. Learned counsel further submits that the petition suffers from suppression and misstatement of material facts. According to the respondents, the petitioners have neither placed the correct factual position before this Court nor disclosed the relevant record, thereby seeking to obtain relief on the basis of an incorrect and distorted factual foundation.

13. It is also contended that the petitioners have not approached this Court with clean hands and have projected an illusory picture regarding the utilization of their land for construction of the subject road. Learned counsel argues that the petition is founded upon disputed questions of fact which cannot conveniently be adjudicated in writ proceedings and, on this ground alone, deserves dismissal.

14. Referring to the report submitted by the Tehsildar concerned vide Communication No. TQ/OQ/448 dated 05.07.2024, learned counsel submits that a spot inspection and re-demarcation of the road, namely ADP Road from Cheki Palpora to Khrewan, was conducted within the territorial limits of Tehsil Qaimoh. The report reveals that the road

exclusively passes through Survey Nos. 356, 356/1 and 357 of Estate Khrewan Lassipora.

15. Learned counsel further submits that Survey No. 357 is recorded as State land in the revenue records and that, as specifically certified by the Tehsildar, no proprietary land belonging to the petitioners has been utilized for construction of the subject road. It is, therefore, argued that the very foundation of the petitioners' claim that their land has been encroached upon or acquired without compensation is factually incorrect and stands belied by the official demarcation report.

16. On the strength of the aforesaid report, learned counsel contends that no part of the petitioners' land has been used in the execution of the project and, consequently, the question of acquisition, demarcation or payment of compensation does not arise. It is submitted that the petitioners are attempting to take undue advantage of the liberal access afforded under the constitutional writ jurisdiction despite there being no infringement of any legally enforceable right.

17. In addition to aforesaid submissions, the status report has also been filed in pursuance to the direction passed by this Court vide order dated 03.12.2024, which reiterates what has been already submitted by the respondents in the reply-affidavit. The said status report has been filed by the Deputy Commissioner, Kulgam, supported by an affidavit.

18. Learned counsel submits that the status report is based upon Demarcation Report No. TQ/OQ/2025/302 dated 04.06.2025 submitted by the Tehsildar, Qaimoh. Referring to the said report, it is contended that the ADP Road from Chekipora to Khrewan, within the territorial

jurisdiction of Tehsil Qaimoh, traverses exclusively through Survey Nos. 356, 356/1 and 357 of Estate Khrewan Lassipora.

19. It is further submitted that the land falling under Survey Nos. 356 and 356/1 is recorded as Kahcharai land, whereas the land falling under Survey No. 357 is recorded as State land. Learned counsel submits that the demarcation report categorically records that no proprietary land belonging to the petitioners has been utilized for construction of the said road within the limits of Tehsil Qaimoh.

20. Learned counsel, therefore, contends that in view of the findings recorded in the demarcation report and the status report filed before this Court, the claim of the petitioners that a portion of their land has been utilized for construction of the road is factually incorrect and, consequently, no case for payment of compensation is made out.

21. Heard and considered.

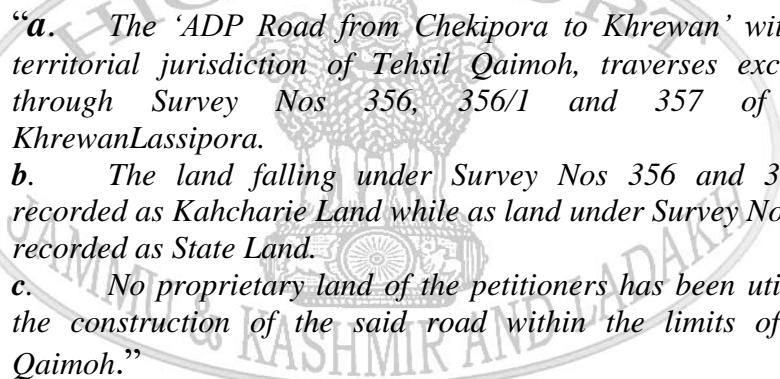
LEGAL ANALYSIS

22. The entire claim of the petitioners rests upon the assertion that a portion of their proprietary land has been utilized for construction of the road in question. The entitlement of the petitioners to compensation is, therefore, wholly dependent upon proof of the foundational fact that their land has actually been taken over or utilized by the respondents.

23. In order to ascertain the same, this Court vide order dated 03.12.2024, directed the Deputy Commissioner concerned to get the land of the petitioners demarcated and to submit a detailed status report indicating whether any portion of the petitioners' land had been utilized for the construction of the road.

24. In compliance with the aforesaid directions, the Deputy Commissioner, Kulgam, has filed a detailed status report duly supported by an affidavit. A perusal of the status report reveals that, pursuant to the directions issued by this Court, the concerned Tehsildar conducted the demarcation exercise and submitted Demarcation Report No. TQ/OQ/2025/302 dated 04.06.2025. The findings recorded therein form the basis of the status report filed by the Deputy Commissioner before this Court.

25. The relevant portion of the status report reads as under:



*“a. The ‘ADP Road from Chekipora to Khrewan’ within the territorial jurisdiction of Tehsil Qaimoh, traverses exclusively through Survey Nos 356, 356/1 and 357 of estate KhrewanLassipora.
b. The land falling under Survey Nos 356 and 357/1 is recorded as Kahcharie Land while as land under Survey No. 357 is recorded as State Land.
c. No proprietary land of the petitioners has been utilized in the construction of the said road within the limits of Tehsil Qaimoh.”*

26. The status report unequivocally records that the road from Cheki Palpora to Khrewan passes through Survey Nos. 356, 356/1 and 357 only and that no proprietary land belonging to the petitioners has been utilized in the construction of the road. The report further reveals that the land over which the road has been constructed is recorded either as Kahcharie land or State land.

27. Significantly, the petitioners have not placed on record any material of a cogent nature to discredit the findings recorded in the demarcation report prepared by the competent revenue authority pursuant to the directions of this Court. In the absence of any material demonstrating that the demarcation exercise suffers from illegality, arbitrariness or

factual infirmity, there is no reason for this Court to disregard the findings returned therein.

28. It is trite that a claim for compensation can arise only when it is established that proprietary land belonging to a private individual has been acquired, occupied or utilized by the State or its instrumentalities. Once the competent revenue authority has categorically reported that no land belonging to the petitioners has been utilized for the project, the very foundation of the claim for compensation ceases to exist.

29. This Court, in **Villagers of Anzwalla v. State, 2012 (3) JKJ 213 [HC] (OWP No. 399/2010, decided on 12.06.2012)**, has held that the Government is well within its competence to acquire mehfooz kahcharai land for public purposes, particularly in situations where no alternative land is available. It has further been held that the compensation arising from such acquisition is to be utilized for public purposes and is payable to the concerned Panchayat. For ready reference, relevant part of the judgment is reproduced hereinbelow:

"5. It is settled position of law that Kahcharai Land is the property of the Government; therefore, the petitioners have no individual rights or interest on the said land. The Government is within its powers to acquire it, when the same is for the public purpose, more so, when the amount of compensation on account of the land in question will be utilized by transferring the same to the village Panchayat in terms of Cabinet Decision No. 355 dated 27.03.1979 read with Government Order No.Rev(LAK) 275 of 1979 dated 28.09.1979. A plain reading of the provision of the Land Acquisition Act and the Government order aforementioned, clearly establishes that the Kahcharai Land can be utilized for the public purpose, when alternate and suitable land is not available."

30. Furthermore, this Court in case titled as **Habibullah Sheikh v. State of J&K** , 2009 (1) SLJ 150 : 2008 (3) JKJ 170[HC] has held that *kahcharai* land is amenable to acquisition for a public purpose. It has been further laid down that the compensation in respect thereof is payable to the concerned Panchayat, within whose jurisdiction the land falls, and is to be utilized for the welfare of the local community. It is, therefore, appropriate to reproduce paragraphs 5 and 6 of the said judgment, which read as under:

"5 The petitioners have no right or interest over the said land. It is virtually a property of the government but meant for grazing purposes. If kahcharai land is to be acquired for any public purpose the amount is to be spent for welfare of the community. Division Bench of this Court in case titled [1]Ghulam Mohammad Bhat & Others v. State and Anr. reported as SLJ 1981 JK 254 has held that if Kahcharai land is acquired, the compensation is payable to the concerned Panchayat in whose jurisdiction land falls. It is the property of the community.

6 If Kahcharai land is acquired, the petitioners have no right to challenge the same. However, the compensation amount is to be utilized for the benefit of the villagers. The villagers are not before the Court. The writ petitioners have filed writ petition in individual capacity. The electric department has specifically averred that land came to be acquired for the purposes of construction of Grid Station for public purpose. The petitioners cannot seek any relief against the respondents-Electric Department..."

31. The judgments referred to hereinabove succinctly lay down that *kahcharai* land, being State property, can be validly acquired for public purposes; that no individual has any proprietary right therein so as to maintain a challenge to such acquisition; and that the compensation, if any, is payable to the concerned Panchayat for the welfare and benefit of the local community.

32. In the considered opinion of this Court, the right to claim compensation is intrinsically linked to the existence of legally recognized proprietary rights in the land sought to be acquired. Such a right accrues only in respect of proprietary land where ownership is vested in an individual or entity in accordance with law. In contradistinction, kahcharai land, being State-owned land reserved for common and community use, does not confer any individual proprietary interest upon the petitioners. Consequently, the petitioners cannot lay any lawful claim to compensation in respect thereof, the same being neither legally tenable nor maintainable.

33. The plea based upon Article 300-A of the Constitution also cannot be accepted for the reason that deprivation of property is a condition precedent for invocation of the constitutional protection available thereunder. In the present case, no deprivation of the petitioners' property has been established from the material placed on record.

34. Therefore, the petitioners cannot be permitted to seek compensation on the basis of a presumed encroachment upon their land when the official demarcation conducted pursuant to judicial directions has conclusively ruled out any such encroachment of the proprietary land of the petitioners as alleged.

CONCLUSION:

35. From the aforesaid discussion, it emerges that the entire edifice of the petitioners' claim rests upon the allegation that a portion of their proprietary land has been utilized for construction of the road in question. However, the said assertion stands conclusively negated by

the demarcation conducted by the competent revenue authority pursuant to the directions of this Court. The status report filed by the Deputy Commissioner, Kulgam, duly supported by affidavit, unequivocally establishes that the road traverses through Survey Nos. 356, 356/1 and 357 and that no proprietary land belonging to the petitioners has been utilized for the project. The petitioners have failed to place any credible material on record to dislodge or contradict the findings returned in the demarcation report, which till date has not been called in question by the petitioners.

36. Since no infringement of any proprietary right of the petitioners has been established, the question of payment of compensation does not arise. Consequently, the petitioners cannot invoke the protection available under Article 300-A of the Constitution of India, as the essential requirement of deprivation of property has not been demonstrated. The reliefs sought in the writ petition, being founded upon a factual premise which stands disproved from the official record, are therefore unsustainable in law.

37. Accordingly, the instant petition being bereft of any merit is dismissed along with all connected applications.

(WASIM SADIQ NARGAL)
JUDGE

Srinagar

04.06.2026

“Mubashir”

Whether the Judgment is speaking: Yes/No
Whether the Judgment is reportable: Yes/No