HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

Case no(s):
OWP no.1182/2011 & IA no.1871/2011
And//c/w
OWP no.1180/2011 & IA no.1869/2011; OWP no.1675/2012 & IA no.2716/2012; OWP no.678/2010 & IA no.1108/2010; OWP no.904/2010 & CMP 1508/2010; OWP no.837/2010 & IA no.1385/2010; and OWP no.930/201 & CMP 1539.
And
Cont. (OWP) nos. 638/2011; 640/2011; 641/2011; 54/2012; and 55/2012.

Date of decision:29.01.2014

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i)	Mohd Sultan Khan.	v.	State of J&K & ors.
ii)	Ghulam Nabi Khan	v.	State of J&K & ors.
iii	Mohd Amin Wani & ors.	v.	State of J&K & ors.
iv)	Raj Kumar Tickoo & ors.	v.	State of J&K & ors.
v)	Abdul Rashid Hilal & anr.	v.	State of J&K & ors.
vi)	Aziz-ul-Nisa & anor.	v.	State of J&K & ors.
vii)	Abdul Majid Bhat.	v.	State of J&K & ors.

Coram:

Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

Appearing counsel:

For Petitioners: Mr. J. H. Reshi, Advocate;

For Respondents: Mr. N. H. Shah, Dy. AG and
Mr. Mohsin Qadri, Advocate.

1. These seven petitions involve somewhat common facts. However, before stating the individual facts of these cases, I deem it appropriate to narrate the genesis of the controversy that is involved in these cases. These facts would also shed some light on casual approach of the concerned governmental functionaries in a matter involving State exchequer.

2. Way back in 2004, a proposal was mooted by the State Tourism Department through Chief Executive Officer, Pahalgam, for expansion of Pahalgam Golf Course for which certain lands were required to be acquired. The proposal was discussed in a meeting chaired by the Chief Minister on 18.04.2004 and the Chief Executive Officer, Pahalgam Development Authority, was authorized to place an indent with the Deputy Commissioner, Anantnag, for acquisition of land. Prior to that the Tehsildar concerned appears to have furnished the relevant details, presumably based on revenue records, of the land to the Chief Executive Officer, Pahalgam Development Authority. After the aforesaid authorization, the Chief Executive Officer addressed communication no. PDA/CEO/INCL / 1385-90 dated 14.05.2004 to the Deputy Commissioner, Anantnag, in which he, *inter alia*, stated as under:

> "…The broad details of land coming under the upgradation / expansion of Pahalgam Golf Course have already been mentioned in the letter referred to above on the basis of the site plan prepared under the supervision of Golf Consultant. The revenue records submitted by the Tehsildar Pahalgam indicate that land measuring 61 kanals 13 marlas in estate Laripora situate on Pahalgam Golf Course Laripora road and 378 kanal 10 marlas situate between Maize farm / private land and proposed dear park is to be acquired / transferred. The details of the land are as under:

S. No.	Khasra No.	Area of land	
		Kanal	Marlas
1.	193	9	00
2.	209	8	19
3.	1545/212	2	09
4.	1543/212	2	01
5.	216	0	18
6.	217	2	18
7.	243	1	18
8.	1352/343	1	00
9.	1302/343	3	00
10.	346	3	17
11.	348	3	14
12.	1679/349/Min	1	10

13.	1534/350	2	00
14.	1461/350	2	00
15.	351	2	08
16.	352/Min	7	15
17.	352	3	05
18.	1694/352	1	10
		61	**13**
19.	1	4	09
20.	1249/2	3	12
21.	1538/2	2	10
22.	1538/2	1	00
23.	1548/2	0	16
24.	3	0	14
25.	4	5	09
26.	5	7	00
27.	6	4	00
28.	6	1	13
29.	7	1	17
30.	13	3	09
31.	14	3	16
32.	15	1	08
33.	16	3	09
34.	18	4	00
34.	26	2	04
36.	29	5	11
37.	31	6	10
38.	86	75	09
39.	1081/224	7	01
40.	1082/224	2	14
41.	1033/224	4	09
42.	1084/224	2	15
43.	1085/224	3	02
44.	1086/224	6	09
45.	1087/224	4	01
46.	1088/224	5	05
47.	1089/224	5	14
48.	1090/224	3	04
49.	1091/224	1	10
50.	1091/224	3	00
51.	1101/224	6	05
52.	1101/224	0	13
53.	1102/224	2	01
54.	1103/224	7	01
55.	1104/224	5	06
56.	1106/224	6	04

57.	1107/224	2	04
58.	1115/224	4	05
59.	1116/224	5	18
60.	1117/224	2	10
61.	1131/224	2	11
62.	1168/224	10	19
63.	1169/224	1	05
64.	1170/224	0	14
65.	1170/224	0	14
66.	1200/224	1	18
67.	1310/224	3	08
68.	1311/224	5	19
69.	1312/224	3	13
70.	1313/224	8	01
71.	1314/224	0	18
72.	1314/224	0	18
73.	1315/224	6	08
74.	1315/224	2	02
75.	1642/224	16	03
76.	1386/224	2	10
77.	1708/224	2	00
78.	1697/224	4	00
79.	1697/224	14	00
80.	1698/224	2	01
81.	1105/1/224	5	06
82.	1720/224	2	10
83.	1693/224	1	00
84.	1695/224	6	00
85.	1707/224	16	15
86.	1187/224	4	01
87.	224/1	4	12
88.	224/1	2	00
89.	224/1	2	00
90.	224/1	0	06
91.	224/1	2	00
92.	224/1	1	00
93.	224/2	3	02
94.	38/Min	3	15
95.	38/Min	3	14
		378	10

02) By placing indent for the land on the basis of information / documents submitted by the Tehsildar the nature of the land is not admitted in favour of a claimant, if any, as disregard of the law / rules Shamilat Najaiz / State land has been expropriated

> by changing nature thereof into Shamilat Jaiz and etc. This can further be verified on the basis of records of Settlement jaded 1907 & Settlement Tarmeem 1935. However, from out of the said land some of the land owners have been offered land in exchange at various locations at Pahalgam and Laripora and the consequences thereof should have been to mutate the land in favour of State but same does not seem to have been done. Similarly land acquired from time to time has neither been brought on record nor possession thereof taken over. The Agriculture department has acquired 203 kanal 12 marlas but existing Golf Course is in possession of 185 kanals on spot and the balance area is obviously in possession of unauthorized occupants who are entitled for compensation. Similarly, the indent encompasses State / shamilat land which is not (to) be acquired but transferred to Tourist Department. In case of Kacharai land the usufruct shall be available for locals for grazing purposes till alternate site / land is identified for it or Golf Course / Ski resort laid in a manner s as to not disturb the use of land e.g. Khasra No.86 for grazing purposes. While acquiring the land the concerned Collectorate shall have to determine the eligibility of claimants on the basis of land records, including Misli Haqiyat, a copy whereof is still available in Central Department Srinagar. The funds are assessed shall be arranged and placed at the disposal of the Collector.
>
> 03) It is therefore, requested kindly to initiate the land acquisition for the land qualifying for it under compulsory method of acquisition and balance land transferred to tourism department being State / Shamilat."
>
> ***(Underlining supplied)***

3. The above communication addressed by the Chief Executive Officer clearly sounded a caution that land belonging to the State had been expropriated by changing the nature thereof in disregard of the law and rules. Not only that, it was also indicated therein that certain lands which had been already acquired by the State continued to be in possession of private individuals, ostensibly, indicating that the said lands, too, had been included in the Khasra numbers mentioned in the letter. Further, some persons had been allotted alternate lands in lieu of their portions of land,

but entries in regard thereto had not been made in the revenue records, etc. etc.

4. Notwithstanding the above, and unmindful about the aforesaid caution and a request made by the Chief Executive Officer that the concerned Collectorate shall have to determine the eligibility of claimants, on the basis of land records, the Additional Deputy Commissioner, Collector, Anantnag, issued notification no. LA901) of 2004 dated 04.05.2004 under Section 4 of the Jammu and Kashmir Land Acquisition Svt. 1990 (for short hereinafter, the Act) in respect of the land comprised in aforesaid Khasra nos. measuring 392 kanals and 13 marlas.

5. Subsequent thereto, the Government in the Revenue Department, seemingly with their eyes shut to what the Chief Executive Officer, Pahalgam Development Authority, in his aforesaid communication had cautioned, vide notification no. 37 of 2005 issued under endorsement no. Rev/LAK/21/2005 dated 07.06.2005 issued declaration under Section 6 of the Act that the land measuring 393 Kanals 02 Marlas, notified vide the aforesaid notification dated 04.05.2004 by the Collector, Land Acquisition, Deputy Commissioner, Anantnag, was required for public purpose for expansion of Golf Course, Pahalgam and directed the Collector to take order for acquisition of the land specified therein under Section 7 of the Act.

6. It appears, thereafter, out of the aforesaid notified land, possession of land measuring 364 Kanals was handed over by the Tehsildar Pahalgam to the Chief Executive Officer, Pahalgam Development Authority on 01.04.2006. However, this document, produced during the course of hearing before the Court does not specify the Khasra nos. of the land which was taken over. It is a plain piece of paper, bereft of any semblance of being a governmental document; not that it is false, but demonstrative of

the casual manner things have been rushed through. It is quoted in extenso hereunder:

> "Subject: Handover/takeover note for land acquired for extension of Golf course Laripora-Pgm.
>
> After joint survey of Revenue deptt. Officers and PDA officials for extension of golf course at Laripora-Pahalgam, the demarcated land shown as below is hereby handed over/ taken over for the said golf course.
>
> | | | |
> |---|---|---|
> | 1. | Land in front of Maize Form including 2K-00M under Khasra No.93: | 42.50 Kanals |
> | 2. | Land above maize form to Kral Pora Link. | 176.28 Kanals |
> | 3. | Land along dear park fencing near Existing gold couse and maize form. | 69.65 " |
> | 4. | Land above Kral pora link (Kqahcharai) Kh. No.86. | 75.28 " |
> | | Total: | 364-00 Kanals |
>
> This land is besides existing golf course of 550.09 Kanals and maize form land of 203K-04M."

7. Meanwhile, it appears that the Collector, Land Acquisition, Antnang, prepared a draft award and submitted it to the Divisional Commissioner, Kashmir. The Divisional Commissioner, in turn appears to have sent it to the the Financial Commissioner (Revenue) for examination. The Deputy Commissioner (C) with the Financial Commissioner (Revenue) returned it to the Divisional Commissioner vide his letter No. FC/LS/LA-1735/04 dated 13.12.2006 raising certain doubts. The letter is extracted below:

> "Kindly refer to your letter No.Div.Com/LAS-Acq/(925) dated 31.10.06 regarding the subject noted above. In this connection, I am directed to request you that the draft award prepared by the Collector concerned reveals that the entries made in the ownership and tenancy columns have not been made in detail by the Collector concerned and hence it can not

be seen that the share holders recorded in tenancy column whether figure in ownership column or not.

Besides, the following observations may also be clarified:

(i) In column No.19 of the apportionment statement Abdul Majid and others have been recorded as owners and in tenancy column the land has been recorded in their self cultivation, but the tenancy column of the Khasra Girdawari has been left blank. Besies, some muations shave been attested and a note thereof has been made with red ink in the copy of the Jamabandi attached with the case, bfut these mutations does not have been incorporated in the revenue record as well as in the apportionment statement.

(ii) The Collector concerned may be asked to certified that the entries made in the apportionment statement are as per the upto date revenue record.

The case may kindly be returned after doing the needful."

8. It is not known whether the needful was done pursuant to the aforesaid observations made by the Financial Commissioner or whether the papers were re-sent to the Financial Commissioner for further examination. However, the acquisition proceedings were finalized and the final award was made on 23.05.2008. The total compensation for the chunk of land at the rate of Rs.4.50 lacs per Kanal was assessed at Rs.13, 29.07,500.00 with Jabrana @ 15 % equaling to Rs.1,99,36,125.00. Thus the total award, inclusive of Jabrana, was made to the tune of Rs.15,28,43,625.00. The assessed amount, as aforesaid, was to be apportioned amongst the interested persons as per details given in apportionment statement contained in Annexure 'A' to the final Award. The aforesaid total award amount was deposited by respondent no. 2, i.e., the Chief Executive Officer, Pahalgam Development Authority, Pahalgam, with the Collector Land Acquisition.

9. While the compensation as determined in the final award was being paid to the claimants, and an amount of Rs.7, 53,73,875.00 was disbursed amongst some of the claimants, a case FIR no.1/2009 was registered at

Police Station, Vigilance Organization, during the investigation of which certain discrepancies were noticed. As per the statement made before a Coordinate Bench of this Court on 06.12.2013 by Mr. N. H. Shah, learned Deputy Advocate General, the award had been wrongly passed and published inasmuch as persons who were not owners of the land were held entitled to compensation. The precise details of the allegations contained in that FIR are not known.

10. Consequent upon the registration of the aforesaid FIR, it appears that the whole acquisition records were seized by the Vigilance Organization. The aforesaid criminal case is said to have culminated into filing of a challan in the Court of competent jurisdiction. On a motion made later by the Collector, Land Acquisition, Anantnag, before the Court of competent jurisdiction, the records seem to have been released to making payment to the rightful owners of the acquired land etc. During the course of investigation of the aforesaid case, what followed is mentioned in communication no. 1033/LA/Ang dated 02.03.2010 addressed by the Deputy Commissioner, Anantnag, to the Divisional Commissioner, Kashmir. A photocopy of this communication and the allied documents are appended as annexures 'N' and 'O' at PP 98 to 105 to one of the clubbed writ petitions, being OWP no.1675/2012. The letter is extracted below:

> "The Vigilance Organization vide letter no. SSP (ABP)/09-221-23 dated 16.02.2009, desired that a team of Revenue Officers should be constituted to demarcate the whole area under the alignment of Golf Course in presence of Deputy Superintendent of Police, Vigilance Organization, Kashmir, Srinagar. A committee of officers was constituted vide this office No. DCA/SQ/09/1331-32 dated 22.06.2009. After spot verification, the said Committee submitted a report clearing certain survey Nos. for payment of compensation. They however, observed that in all such survey Nos. which are shamilat in nature and are in possession of outsiders mostly people from Srinagar and Anantnag, who had either purchased the land at Laripora through sale deeds or by getting their names entered in the revenue record in Khana Kashat, having

no proprietary land in the estate are not entitled to the compensation and as such recommended that no payment should be made to such possessors. The recommendations have been made on the basis of Circular No.3 dated 26th of August 1969 Para 4 issued by the Revenue Department contained in Land Acquisition rules which reads as under:

> 'Shamilat land under acquisition is as good as land held in ownership and every co-sharer is entitled to receive compensation for the land to the extent of his share. Where, however, such land is not in exclusive possession or occupation of a co-sharer or is so held by any person who has no share in shamilat, the compensation may be paid to the whole body of the proprietors, hassab rassad khewat or mazrua, as the case may be, excluding the person or persons who, being in exclusive possession thereof, have already been paid compensation for the shamilat land to the extent of the share, which will not be taken into account. The same principle may be applied to all other joint proprietary holdings.'

The Collector has reported that as per intikal No.45 of the year 1934-35, only 61 kanals 13 marlas are 'Jaiz Nautor' and rest of the land is still recorded as Shamilat wherein no 'Nautor' has been carried nor land revenue has been charged. The Collector, before making payments pending amongst the interested persons, sought certain clarifications which are indicated below:

i. Whether or not such Shamilat which has not been declared as Jaiz or Nautor Jaiz is payable for compensation.

ii. Whether or not Shamilat hasbi rasad or 'Nautor Jaiz' is entitled for compensation.

iii. Whether or not Shamilat as such is entitled for payment to the individual occupants in view of the fact that Shamilat is always under collective ownership rights of the village community.

iv. Whether or not such lands are alienable or transferable by way of gift or through sehti kashat or and could be covered under section 4 and 8 of the Agrarian Act, 1976.

v. Whether or not such occupants are entitled for payment who have acquired the Shamilat through above said modes having no proprietary land in the estate.

The case was brought to the notice of the undersigned as District Collector for issuance of clarification with respect to the doubts / observations raised / made by the Collector. To address these issues a team of Collectors comprising Addl. Deputy Commissioner (Collector, Railways and National Highway); Assistant Commissioner (Revenue) Anantnag, (Collector R&B/NNI-B); and Collector ERA was constituted to look into the legality, propriety and entitlement of payment with respect to Shamilat land in light of queries raised by the Collector Land Acquisition, Golf Course. The team of officers thoroughly analyzed various aspects of the case and have furnished a report, copy whereof is enclosed. The Committee has recommended payment of compensation in favour of the possessors.

The recommendation of the Committee of Collectors appears to be genuine and it is accordingly requested to convey approval of adoption of these recommendations."

The recommendations made by the aforesaid Committee of Collectors are quoted hereunder:

"In pursuance to Deputy Commissioner, Anantnag's order No.DCA/SQ/10/1514-20 dated 20.01.2010 and Committee constituted has analyzed the various aspects of the case and perused the legal provisions and various judgments of High Courts and Apex Court in this regard. The legality of the similar cases have many times been adjudicated by State High Courts and Apex Court. The most relevant and appropriate judgment of the Hon'ble High Court reads as under:

Land Acquisition Act / (1 of 1984), S. 23 – Shamilat land – Right of person in possession to claim compensation.

The rights and incidents of Shamilat land in occupation of a person are the same as if he is the owner thereof. In case of State Khalsa land, the position is different. The mere fact that Shamilat land has been reserved for grazing purposes would not militate against the fact that the person in position is the owner thereof and that he has remained in

> possession thereof for many years even in extreme cases where the Govt. grants land on certain conditions and the conditions are not enforced by the Govt. and the land is afterwards acquired under the Land Acquisition Act, the latter can not be refused compensation to the possessor of the land. When compensation cannot be refused t a person in occupation of the land granted by the Government, which in other words means that the land is state land it cannot be said that he person is not entitled to compensation of the Shamilat land of which he is in defector and dejure possession AIR 1968 SC 105 REL on.
>
> Therefore, in view of the legal provisions enshrined on the subject the Committee is of the unanimous opinion that the possessor of the land acquired under Golf Course, Laripora, Pahalgam, Shamilat in nature are entitled to the compensation."

11. In order to discuss the issue and find an answer to the questions posed by the Deputy Commissioner, Anantnag, in his aforesaid communication dated 02.03.2010 and take a final decision in the matter in context of the revenue records pertaining to the land in question, the Divisional Commissioner under his Chairmanship convened a meeting on 22.04.2010 at Anantnag which was participated by Deputy Commissioners, Anantnag, Pulwama, Shopian; Additional Deputy Commissioner, Anantnag; and Assistant Commissioner (Revenue), Anantnag. The minutes of the meeting signed by the participant authorities and circulated under endorsement no. Div.Com/LAS-Acq/915/1088 dated 03.06.2010, *inter alia*, recorded as under:

> "The case file was perused. It was observed that since issues involve interpretation of law, it shall be expedient to constitute a committee of Revenue officers for examination of the issues and legal interpretation thereof. Accordingly, a committee of District Collectors was constituted vide this office order No. Div. Comm / LAS – Acq / 925 / 972 dated 17.04.2010. The Committee held its meeting at Dak Bungalow, Khanabal on 22.04.2010. The Collector Land Acquisition (Assistant Commissioner (Rev) Anantnag furnished relevant documents

pertaining to case before the Committee. The Committee examined the records thoroughly. It was observed that the intikal No.45 with respect to village Laripora Pahalgam of the year 1932-33 AD reveals:

a) That an area of 2400 Kanals and 07 Marlas had been kept reserved as Shamilat 'Hasbi Rasad' (Pro rata);

b) From the said area of 2400 Kanals 07 Marlas, an area of 373 Kanals 17 Marlas had been set apart as 'Nautor Jaiz';

c) An area of 156 Kanals 13 Marlas of the Shamilat land has come under the alignment of extension of Golf Course at village Laripora Pahalgam;

d) An area of 61 Kanals 13 Marlas falling under survey Nos. 1081/224 (07 Kanals - 01 Marlas), 1082/224 (02 Kanals - 14 Marlas), 1084/224 (02 Kanals - 15 Marlas), 1085/224 (03 Kanals - 02 Marlas), 1086/224 (06 Kanals - 09 Marlas), 1088/224 (05 Kanals - 05 Marlas), 1089/224 (05 Kanals - 14 Marlas), 1090/224 (03 Kanals - 04 Marlas), 1101/224 (02 Kanals – 18 Marlas), 1102/224 (02 Kanals – 01 Marlas), 1106/224 (06 Kanals – 04 Marlas), 1107/224 (02 Kanals – 04 Marlas), 1115/224 (04 Kanals – 05 Marlas), 1131/224 (02 Kanals -11 Marlas), 1105/1/224 (05 Kanals – 06 Marlas) coming under the alignment of Golf Course has only been observed to be Shamilat 'Nautor jaiz'.

e) During the discussion it was revealed that the partition of Shamilat 'Hasab Rasad' has been completed in the estate and accordingly the position has been reflected into the Revenue records mentioning that 'Bhiachara Mukamal'. Therefore, there cannot be any further position of Shamilat 'Hasab-e-Rasad'.

f) An area measuring 61 Kanals 13 Marlas out of a total area of 373 Kanals 17 Marlas only had been acquired for the Golf Course, which is duly entered in the name of occupants in Girdawari Kharief 1971.

Accordingly, it has been concluded as under:

i) That only an area measuring 373 Kanals 17 Marlas declared as 'Nautor Jaiz' and assigned Land Revenue in accordance with the law and standing orders is 'Shamilat' Hasab-e-Rasad / Jaiz Shamilat. Therefore, only an area of land measuring 61 Kanals 13 Marlas

acquired for extension of Golf Course at Pahalgam and entered into the names of individual owners / occupants during Kharief 1971 are entitled for payment of compensation in accordance with LB 10 and the Collector shall have to record certificate in this behalf in respect of entitled land owners.

ii) All such occupants who are in occupation of these 61 Kanals 13 Marlas acquired through various modes viz. alienation / transfer are also entitled for payment of compensation, irrespective of the fact whether they have or not have proprietary land in the estate.

iii) All such occupants whether having or not having proprietary land in the estate who are in occupation of Shamilat land 'Nautor Jaiz' coming under alignment of extension of Golf Course other than 61 Kanals 13 Marlas 'Jaiz Shamilat' shall not be entitled to the payment of compensation."

12. Consequent upon the above decision, the Collector, Land Acquisition, Anantnag, seems to have either withheld the compensation determined in terms of the award dated 23.05.2008 or initiated the process of recovery of such compensation from those of the persons who have been disbursed such amounts but found not due to the same. Hence these writ petitions by the aggrieved persons. Now the individual relevant facts of each of the writ petitions is noted below:

OWP no.1182/2011:

13. The writ petitioner is aggrieved of Notice no. 613/LA/Ang dated 05.10.2009 addressed by Assistant Commissioner (Rev), Anantnag, to the Tehsildar (North) Srinagar for recovery of an amount of Rs.16,81,875 paid to the petitioner on account of compensation of land measuring 3 Kanals 5 Marlas comprised in Kh. No.352 min situated at Laripora Pahalgam on the basis of Intikhab and Jamabandi Grdawari and mutation nos. 1764 (sale deed) 1361 Section 4 and 1365 under Section 8 of J&K Agrarian Reforms Act produced before the Collector. After verification, it has been found that the land under survey no.352 min was not proprietary

or shamilat Section-5 land and, therefore, merited no compensation. The Tehsildar has been requested to recover the said amount from the petitioner as arrears of land revenue. The petitioner, apart from seeking quashment of the aforesaid notice, has also prayed for a mandamus to direct the respondents to pay statutory interest to the petitioner from the date of taking over of possession of the said land acquired for public purpose. The petitioner has also prayed for a direction to the Collector, Land Acquisition to make a Reference to the Civil Court under Section 18 of the Act.

OWP no.1180/2011:

14. The writ petitioner claims that he owned and possessed land measuring 3 Kanals and 10 Marlas comprising Khasra No.352 Min, Khewat no.186 situated at Laripora, Pahalgam which he had purchased vide duly registered sale deed dated 23.08.2007, photocopy whereof is stated to be annexed as annexure "A" to the petition. [Perusal of the photocopy of the sale deed annexed with the petition as annexure 'A' reveals that it has been executed on 23.09.2005 and registered by the Sub-Registrar, Aishmuqam, on 24.09.2005]. The petitioner further claims that the said land has been acquired by respondent no.3, i.e. Collector Land Acquisition (Assistant Commissioner, Revenue, Anantnag) vide award dated 23.05.2008 and possession of the land was taken over. But he has not been paid the compensation. Petitioner has prayed for identical reliefs as in the aforesaid writ petition.

WP no.1675/2012:

15. The petitioners, 6 in number, claim that they were owners of land measuring 7 Kanals and 17 Marlas comprising Khasra no. 1089/224 to the extent of 5 Kanals, 14 Marlas and Khasra no.1315/224 to the extent of 2 Kanals, 3 Marlas situated at Laripora, Pahalgam. The documents they are

relying upon to assert their ownership are two affidavits attested by Oath Commissioners at Anantnag, Kashmir. It is stated that their names are mentioned at serial nos. 22 and 58 of the apportionment statement annexed to the final award passed by the Collector. The petitioners have not been disbursed any compensation. They have prayed for writs in the nature of certiorari and mandamus as mentioned above.

OWP no.678/2010

16. Petitioners, 14 in number, claim that their land measuring 24 Kanals, 14 Marlas (detailed as 04 Kanals , 01 Marlas comprised in Khasra no.1087/224 belonging to petitioner no. 1; 16 Kanals, 03 Marlas comprised in Khasra no. 1693/224 belonging to petitioner nos. 2 to 8; and 04 Kanals, 10 Marlas comprised in Khasra no.1091/224 belonging to petitioners 9 to 14) has been acquired by Assistant Commissioner (Revenue), Collector Land Acquisition, Anannag. It is stated that in the apportionment statement appended to the award, the petitioners' names figured at serial nos. 25 (petitioner no.1), 55 (petitioners 2 to 8) and at serial no. 29/30 (petitioners 9 to 14). The petitioners have challenged the decision dated 22.04.2010 taken by the Committee of Revenue Officers under the Chairmanship of Divisional Commissioner, Kashmir with prayed to direct the Collector, Land Acquisition Anantnag to release the withheld compensation in favour of the petitioners as per the apportionment statement of the final award dated 23.05.2008 together with interest 12 % per annum.

OWP no.904/2010

17. Petitioners, 2 in number, claim that their land measuring 2 Kanals and 18 Marlas [01 Kanal comprised in Khasra no.352 Min belonging to petitioner no.1 and 01 Kanal and 18 Marlas comprised in Khasra no.343 belonging to petitioner no.2] has been acquired by the respondents. It is stated that the land of the petitioner no.1, measuring 1 Kanal comprising

Khasra no.352 was shown at serial no.16 of the notification issued by the Collector Land Acquisition under Section 4 of the Act; whereas that of petitioner no.2 was shown at serial no.7 thereof. In the apportionment statement appended to the Award, petitioner's names are stated to have figured at serial nos. 37 and 35 respectively. Their grievance is that they have not been paid any compensation despite the fact that possession of their aforesaid land was taken over by the indenting department. They have prayed for issuance of writs in the nature of certiorari and mandamus as in other writ petitions.

OWP no.837/2010;

18. Petitioners, 2 in number, in this petition claim that they owned land measuring 05 Kanals [2 Kanals comprising Khasra no.1101/224 and 2 Kanals comprising Khasra no.1315/224 belonging to petitioner no.1; and land measuring 1 Kanal comprising Khasra no.1693/224 belonging to petitioner no.2] situated at Laripora, Pahalgam. In the notification issued under Section 4 of the Act, the land of the petitioner no. 1 was shown at serial nos. 51 and 74 respectively; and that of petitioner no.2 was shown at serial no. 83 thereof. In the apportionment statement attached to the Award dated 23.05.2008, it is stated that whereas the land of the petitioner no.1 measuring 2 Kanals in Khasra no.1101/224 and 2 Kanals in Khasra no.1315/224 was mentioned at serial nos. 31 and 58 thereof, the land of the petitioner no.2 measuring 1 Kanal comprising Khasra no.1693/224 has not been mentioned. However, no compensation has been paid to the petitioners. They have filed this writ petition seeking writ of certiorari challenging the minutes of the meeting dated 22.04.2010 and prayed for direction to the Collector, Land Acquisition to release withheld compensation of favour of petitioner no.1 with further prayer to pass award in respect of the land measuring 1 Kanal comprising Khasra

no.1693/224 and release compensation thereof in favour of petitioner no.2. etc.

OWP no.930/2010:

19. The petitioner in this petition claims that his land measuring 1 Kanal comprised in Khasra no.352/Min situate at Laripora, Pahalgam, was notified in the notice under Section 4 of the Act at serial no.16 thereof. In the apportionment statement appended to the Award dated 23.05.2008 his name figured at serial no.37. It is averred that possession of his land was taken over but he has not been paid any compensation. He has filed this writ petition claiming the same reliefs as aforesaid.

20. The respondents have not filed any effective reply, except that the Collector, Land Acquisition (Assistant Commissioner, Revenue), Anantnag, has filed a two page affidavit in one of these writ petitions, SWP no.1182/2011. Therein, he has stated that during the course of finalization of acquisition proceedings / payment of compensation, a case FIR no.1/2009 was registered and the acquisition papers were seized by the Vigilance Organization, Kashmir. On examination, it was revealed that intikal No.45 of village Laripora Pahalgam of the year 1932-33 AD shows that an area of 2400 K, 07 Marlas had been kept reserved as Shamilat 'Hasab Rasad" (Pro-rata) basis. Out of the said area, land measuring 373 Kanal, 17 Marlas had been set apart as 'Nautor Jaiz' and, out of this area, land measuring 156 Kanals, 13 Marlas of the Shamilat land has come under the alignment of acquired land, which includes an area of 61 Kanals, 13 Marlas 'Nautor Jaiz' (Section-5). It is further stated therein that area measuring 61 Kanals, 13 Marlas as mentioned above (Shamilat Section-5) as such is entitled for payment of compensation after following the procedure as envisaged in Circular instruction no. LB/10/80 and 3 of 1964 issued by the Revenue Department. As regards remaining 95 Kanals of Shamilat land coming in the acquired alignment, the same,

as per records, is recorded as Shamilat under section 4 (Najaiz) which is not entitled for payment of compensation. The Khasra nos. of the area measuring 61 Kanals and 13 Marlas, i.e., Section 5 Shamilat land, have been mentioned in the affidavit.

21. The Chief Executive Officer, Pahalgam Development Authority has filed his reply in all these petitions. However, his role is limited to taking possession of the acquired / transferred land and deposit of the award money with the Collector in terms of the Final Award.

22. I have heard learned counsel for the parties, perused the records appended with the writ petitions and considered the matter.

23. The facts as narrated above, particularly those mentioned by the Chief Executive Officer, Pahalgam Development Authority in his communication no. PDA/CEO/INCL / 1385-90 dated 14.05.2004 to the Deputy Commissioner, Anantnag, coupled with the subsequent examination of records / enquiries conducted by the high level revenue authorities doubtlessly point to the fact that the subordinate revenue officials posted in the area from time to time in the past, by their acts of omission and commission, have manipulated the revenue records aimed at creating interest of such people in the lands at Pahalgam as were not entitled thereto. Therefore, the High Level Committee of Revenue Officers under the Chairmanship of the Divisional Commissioner, Kashmir, have rightly gone to the basic records of the estate to ascertain the factual position, but whether such exercise has been undertaken at the right time is a million dollar question. I will advert to the findings and the decision taken in such meeting by the aforesaid High Level Committee of Revenue Officers a bit later in this judgment, but first I would state the argument(s) raised by the learned counsel for the petitioners.

24. Learned counsel for the petitioners submitted that a person entitled to a share in partible Shamilat land can seek partition thereof and / or sell

his share to a third party who, in turn, can seek partition thereof and deal with it in whatever manner he may wish. He submitted that such a transferee of Shamilat land becomes proprietor of the land in the same manner as the original grantee and is, therefore, entitled to compensation if such land is acquired for public purpose. In support of his argument, learned counsel for the petitioners cited and relied upon the judgments of the Supreme Court in ***Spl. L. A. and R. Officer v. S. Seshagiri Rao***, AIR 1968 SC 1045; ***Akhara Brahm Butya v. State of Punjab***, AIR 1993 SC 366; ***Krishna v. State of Haryana***, AIR 1994 SC 2536; ***Administration of Daman & Diu v. Shri Mohanlal Lalbhai Desai***, 1999(9) Supreme 491. Besides ***Sohan Lal v. Teja Singh***, 1936 PLR 578, the learned counsel also cited and relied upon the judgments of this Court in ***Salam Rather v. Mohd. Ganai***, AIR 1964 J&K 46; ***State of J&K v. Sanna Ullah***, AIR 1966 J&K 45, ***Romesh Chander v. The Financial Commissioner***, 1977 KLJ 464; ***State v. Hamia Begum***, AIR 1979 J&K 48; ***Lal Chand v. Collector***, 1999 SLJ 574; ***Union of India v Mst. Freeni Boga***, 2004(II) SLJ 776.

25. It is true that partible Shamilat land is as good as proprietary land and that a person would be entitled to claim compensation for such land, if acquired for public purpose, but the question is whether the lands involved in these petitions is partible Shamilat? It is not in dispute that the land, in fact, is basically Shamilat land, but in the State of Jammu and Kashmir, broadly speaking, Shamilat land is of two types. Therefore, it becomes necessary to trace the history of the land in question. The historical background thereof is contained in the ***Land Laws in Jammu & Kashmir (II), Imtiyaz, (Srinagar-Kashmir : Srinagar Law Journal Publications, 2010) at PP 80 to 88***. It has also been to some extent dealt with by a Division Bench of this Court in ***Union of India v Mst. Freeni Boga*** (supra), vehemently relied upon by learned counsel for the

petitioners. It would be apt to extract hereunder the relevant portion of the aforesaid judgment from paragraph 27 onwards:

> "27. …Shamilat lands are in a way common land of a village which in fact were the State lands prior to the year 1926. Shamilat and rights in shamilat were the subject matter of Boon No.4 announced by the Maharaja of the State at the Raj Tilak Darbar on 25th February, 1926 …By this boon it was said that the land holders in a particular Mahal would be entitled to have a share in the land declared as shamilat pro rata their holdings that means they had proprietary rights in shamilat land in proportion of the size of their holdings which they would hold in common with the other land holders.
>
> 28. Under the Boon in villages where there was no land entered as shamilat, the common land in the vicinity of the village site which was entered as Khalsa, was converted into shamilat deh and the villagers concerned were given the same rights therein which they possessed in their individual holding.
>
> 29. Whether a person who is a grantee of shamilat land under the Boon, gets proprietary rights over the said land came under consideration before this Court in *Salam Rather v. Mohd Gani*, AIR 1964 J&K 46, the Court held that the land holders have proprietary rights in Shamilat land in proportion to the size of their holdings on pro rata basis. The Court observed as under:
>
> > '…But the basic right that was granted by this Boon was that the land holders in a particular Mahal would be entitled to have a share in the land declared as Shamilat pro rata their holding. That means they had proprietary rights in shamilat land in proportion to the size of their holdings, which they would hold in common with the other land holders. The shamilat could be got partitioned and each individual land-holder gets his share of the Shamilat land in proportion to the size of his Shamilat land in proportion to the size of his holding. The trial court was not, therefore, correct in holding that all that could be transferred about Shamilat land was possessory right alone, but the right of ownership, though joint with others, can also be subject of a Shamilat land.'
>
> 30. Whether a person holding shamilat land is entitled to any compensation in case such a land comes under acquisition, was

considered by a Division Bench of this Court in *State of Jammu and Kashmir v. Smt. Hamida Begum,* AIR 1979 J&K 48. The Court observed:

> 'It is common knowledge that the rights and incident of Shamilat land in occupation of a person are the same as if he is the owner thereof. Had this been State Khalsa land, the position would have been different. The mere fact that Shamilat land was reserved for grazing purposes would not militate against the fact that the petitioner is the owner thereof and that she has remained in possession thereof before the samvat year 2003. Even in extreme cases where the Government grants land on certain conditions and the conditions are not enforced by the Government and the land is afterwards acquired under the Land Acquisition Act, the latter cannot refuse compensation to the possessor of the land. That is what has been observed in AIR 1968 SC 105. Then when compensation cannot be refused to a person in occupation of the land granted by the Government, which in other words means, that the land is State land, how can it be said that in the present case the petitioner is not entitled to compensation for the Shamilat land of which she is in de facto and de jure possession.'

31. Following the view expressed by this Court in these authorities we hold that holder of Shamilat land (which in revenue parlance is known as Shamilat dafa 5) has got the same rights in respect of the land as in the proprietary land and if a portion of Shamilat land comes under acquisition, holder thereof is entitled to its compensation in the same manner as in the case of proprietary land…".

26. It, thus, transpires from the above background and the law laid down by the Courts that the land holders in a particular Mahal would be entitled to have a share in the land declared as Shamilat *pro rata* their holdings, that means, they have collectively proprietary rights in Shamilat land in proportion of the total size of their holdings. On partition, the holder of the Shamilat land proportional to the size of his holding would become a grantee thereof and that such a grantee would get proprietary rights over the said land. Naturally, therefore, he would be entitled to all

consequential benefits arising therefrom, whether it be right to sell or part away with the same or to compensation thereof on acquisition by the Government. The law thus stands settled and I need not refer to the facts and law laid down in other judgments cited and relied upon by the learned counsel.

27. However, in paragraph 31 of the aforesaid judgment, it is clearly laid down that holder of Shamilat land, which in revenue parlance is known as "Shamilat dafa 5" has got the same rights in respect of the land as in the proprietary land. So the question is what is "Shamilat *dafa 5* and Shamilat *dafa 4*" and whether the petitioners' land falls under Shamilat *dafa 5* or Shamilat *dafa 4*? It may be mentioned here that the positive case of the respondents is that the land is Shamilat *dafa* 4.

28. The answer to the first part of the aforesaid question needs to be traced. In this connection, it is necessary to refer to the relevant rules. The ***Land Laws in Jammu & Kashmir (II), Imtiyaz, (Srinagar-Kashmir : Srinagar Law Journal Publications, 2010)***, at page 83 states as under:

> "**4. Shamilat – Ruled 4**:
>
> In Kashmir Province Boon 4 read with Rules regarding entry of Shamilat in the Kashmir Province sanctioned by the Maharaja vide Minister-in-Waiting's No. 2439 dated 20th September, 1927 and notified under Revenue Department Ailan No. 2 dated 16th Katik 1984 created two types of Shamilat:
>
> i. Shamilat under rule 4
> ii. Shamilat under rule 5
>
> Shamilat under rule 4 is that land which is required for state purposes. It includes Shamilat land in the joint possession of the village Assamis which is reserved for common use as village roads, tanks, shrines, burning ghats, burial grounds, common village grazing and the like. It also includes Khalsa waste in which it has been declared that Nautor is permissible under the orders passed in connection with State Council Resolution No. XXII dated 25th August 1924 and Khalsa waste areas of less than two acres entirely surrounded by private holdings and all strips of Khalsa waste of not more than twenty

karms width between private holdings; bedzar areas assessed to land revenue for the payment of which the Assims are jointly responsible.

5. Shamilat – Rule 5

Land in private holdings of village Abadis which is not required for state purposes was recorded as Shamilat by mutation. Land holders in a particular Mahal are entitled to have a share in the land declared as Shamilat under rule 5 pro rata their holdings and such holders possess the same rights over such Shamilat land which they possess in their individual holdings."

29. It appears that, initially the Rules relating to Shamilat pursuant to Boon no.4 were issued vide Ailan No.9 dated 3rd Har, 1983 published in Circularat Mal Part V Page 305 [see the ***Land Laws in Jammu & Kashmir (II), Imtiyaz, (Srinagar-Kashmir : Srinagar Law Journal Publications, 2010)*** PP 88, 89]. These Rules insofar as relevant are extracted below:

"**Boon No.4**

1. The area set aside as Shamilat in accordance with this boon shall be described in the Jamabandi as:

(i) Shamilat Malikan Deh (in the ownership column) in villages where the cultivated lands are held in proprietary rights.

(ii) Shamilat Assamin Deh (in the ownership column) in villages where the cultivated lands are held in proprietary rights.

(iii) Shamilat Mal\guzaran Deh (in the ownership column) in village where the cultivazted lands are held in Assami right.

(iv) Shamilat Maurusian Deh (in the tenants column) in villages where the cultivated lands are held in occupancy rights directly from State.

2. <u>The maximum area to be converted from 'Khalsa' to 'Shamilat' shall not exceed 20 per cent of the total cultivated area of the village exclusive of area set aside as grazing grounds</u>.

3. The word vicinity shall include all land within 30 chains (3000 Karams of 66 inches) of the village site or sites.

> 4. Where a village site is not situated in one place but consists of scattered residential sites each such site may be allotted an area of Shamilat subject to the maximum area laid down for the whole village in rule 2.
>
> 5. Where land reserved for grazing purposes lies within the limits prescribed in rule 3 and 4 it may be recorded as Shamilat, but will not be taken into account in calculating the total area of Shamilat for the purpose of rule 2. Such land will be recorded as 'Kahcharai' in the tenant's column of the Jamabandi.
>
> 6. …
> 7. …
> 8. … "
>
> ***(Underlining supplied)***

30. Thereafter, Ailan No.2 dated 16h Katik, 1984 (1928 CE) was issued. It prescribed the Rules regarding entry of Shamilat in the Kashmir Province, sanctioned by His Highness the Maharaja vide Minister-in-Waiting's No.2439 dated 20th September, 1927 and published in Government Gazette dated 13th Assuj, 1990 in Circularat Mal Part V pages 350 to 352 [see the ***Land Laws in Jammu & Kashmir (II), Imtiyaz, (Srinagar-Kashmir : Srinagar Law Journal Publications, 2010,)*** PP 92, 93]. The Rules provided thus:

> "1. These rules are approved in connection with and modification of Boon No. 4 announced at the Raj Tilak Darbar on 25th February, 1926 and apply to the seven Tehsils of Kashmir Valley and the three Tehsils of Muzaffarabad District.
>
> 2. For the purpose of these rules 'land holder' means a land-holder as defined in Section 3 Clause (3), and 'Assami' means an Assami as defined in Section 3 Clause (4) of the Jammu and Kashmir Land Revenue Regulation of 1980.
>
> 3. Pending the appointment of Assistant Commissioner, the powers to be exercised by them under these rules shall be exercised by the Deputy Commissioner or by Tehsildar specially empowered by name in this behalf by the Revenue Minister. In Tehsils under Settlement the powers of Assistant Commissioner, Deputy Commissioner and Divisional Commissioner under these rules shall be exercised by the

Assistant Settlement Officer, Settlement Officer and Settlement Commissioner respectively.

4. Khalsa waste areas already in the joint possession of the Village Assamis for common use as village roads, tanks, shrines, burning ghats, burial grounds and the like; Khalsa wasate in which it has been declared that Nautor is permissible under the orders passed in connection with State Council Resolution No.XXII dated 25th August 1924; Khalsa wasxte which has been reserved for common village grazing; Khalsa waste areas of less than two acres entirely surrounded by private holdings and all strips of Khalaa waste of not more than twenty Karms in width between private holdings; Bedzar areas assessed to land revenue for the payments of which the Assamis are jointly responsible, shall be recorded as Shamilat by mutation to be sanctioned by the Assistant Commissioner irrespective of the area involved.

5. Khalsa area in the neighbourhood of land in private holdings and of village 'Abadis' which is not required or likely to be required for State purposes may be recorded as Shamilat by mutation subject to the following provisions:

(a) the total area of Shamilat including that created under rules 4 and 5 shall not exceed the total cultivated lands of the village in area;

(b) Only one mutation shall be sanctioned in any one village under rule 5; such mutation may be sanctioned by the Assistant Commissioner where the area is less than 10 acres; the Deputy Commissioner where the area is less than 100 acres; the Divisional Commissioner in all other cases.

Note:- 'Required or likely to be required for State purposes' in this rule does not include the purpose of reservation for grant as a Chak to a private person.

6. Shamilat entries under these rules shall be recorded in the Assami column of the Jamabandi and shall be in the form Shamilat Assamin Deh.

7. Action under rules 4, 5 and 6 shall only be taken once in any one village and thereafter if the Assamis require land for common purposes they must utilize Shamilat or apply for a grant under State Waste Land Rules.

8. All cultivated Khalsa land which has been broken up from waste and which is entirely surrounded by land under Assami rights, or by land which is recorded as Shamilat under

these rules shall be recorded as in the Assami rights of the possessor if he be an Assami of the village; in other cases he shall be recorded as tenant-at-will holding under Shamilat. Mutations under this rule may be sanctioned by a Tehsildar. If such land is not already assessed, it shall be assessed at village revenue rates at the time of mutation, arrears of assessment from the date of Nautor subject to a maximum of five years revenue shall be recovered from the possessor.

9. Existing Nautor from Khalsa waste other than the mentioned in rule 8 shall be reported to the Divisional Commissioner with a note as to whether it prejudices State interests, or is situated inside an extensive area of Khalsa waste, he shall thereupon pass orders either ejecting the possessor or allowing mutation to be made in his name as Assami. In the seven Valley Tehsils of Kashmir proper Nautor which has already been recorded as under tenants-at-wilol under Council Resolution No. XXII dated 25th August, 1924 need not be reported under this rule.

10. All future Nautor from Khalsa waste after the Shamilat has been defined under these rules shall be dealt with strictly under the State Waste Land Rules."

(Underlining supplied)

31. Thereafter, Ailan No.5 dated 23rd Mahg, 1989, published in Government Gazette dated 13th Assuj, 1990 was issued [see the ***Land Laws in Jammu & Kashmir (II), Imtiyaz, (Srinagar-Kashmir : Srinagar Law Journal Publications, 2010)*** PP 94, 95]. It is extracted below:

"It has come to my notice that in Kashmir Valley there is some misunderstanding in regard to the implementation of Shamilat Rules promulgated in connection with the Raj Tilak Boon No.4, announced in the Darbar held on 14th Phagan, 1982/25th February, 1926 and published in Government Gazett vide Notification No.2 of 16th Katik, 1984; also, that these ordrs in some cases have not so far been fully given effect to. In order to remove any possibility of doubt or misunderstanding in applying these rules the following instructions approved of by His Highness the Maharaja Bahadur vide Prime Minister's endorsement No. 60 dated 16th December, 1932 are issued for guidance of the local Revenue Officer:

(2) The Shamilat area shall in no case exceed the total cultivated area of a village. For allotment of Shamilat Deh the established cultivated area of Kharif 1982 (excluding the

Nautor areas referred to in rules Nos. 8 and 9) shall form the basis.

…

…

(4) Nautor Kunindas of Nautors after Kharif 1982 to Kharif 1989 will have no separate individual claims over these are as. Such areas to the extent required can, however, be included as Shamilat as allotted on 100 per cent basis provided there is a margin for their inclusion in the Shamilat Deh.

The village Assamis are entitled to their pro rata share in this area on the basis of the cultivated areas in their possession, and they can have the 'Kami Beshi" adjusted by partition.

(5) Shamilat shall be allotted in the following order of precedence:

(a) Areas falling under rule No.4;
(b) Nautor upto Kharif 1982 under rules 8 and 9
(c) Nautor after Kharif 1982 upto Kharif 1989;
(d) and then the areas refereed to in rule 5 (if necessary and available)

Provided always that the total of all the above mentioned areas shall in no case exceed the established basic cultivated area of a particular village.

In case, however, Nautor after Kharif 1982 exceeds the prescribed limit, Nautor Kunindas shall be rejected from the area in excess under Section 155 of the Land Revenue Regulation No.1 of 1980.

Illustration I

The cultivated area of a village is:

(a) Present cultivated area:	550 acres
(b) Nautor referred to in rules 8 and 9 upto Kharif 1982	50 acres
© Nautor after Kharif 1982 to Kharif 1989:	100 acres
(d) Basic cultivated area of the village 550-(50+100)	400 acres
(e) Khalsa area referred to in rule 4:	200 acres
(f) Nautor after Kharif 1982 to Kharif 1989 referred to in (c) above:	100 acres

The whole area of Nautor after Kharif 1982(c) can be given in Shamilat Deh. Besides a further area of 100 acres out of the area falling under rule 5(f) can be allotted as Shamilat Deh.

Illustration II

…..

(8) It seems unnecessary to give any further explanation in this respect here, but to avoid possibilities of future misunderstanding, it is pointed out that in working out the pro-rata share of Assamis at the time of partition the cultivated area

> and the culturable waste will alone be taken into consideration, while the areas of common use such as village grazing grounds, grave-yards, kuhls, village roads, etc., will be left out of account.
>
> (9) Assamis who have made Najaiz Nautor from prohibited areas such as Kuhls, graveyards, roads, Kahcharai, areas etc., shall be ejected on the spot forthwith according to the provisions of Section 155 of the Land Revenue Regulation No.1 of 1980) and revenue assessed and recovered thereon from the date of possession upto the date of ejectment.
>
> No Najaiz Nautor Kuninda should, however, be allowed to remain in possession of such Nautor. Tehsildars and Naib Tehsildars will be personally responsible to see that the instructions are strictly enforced on the spot and that the orders are not recorded on paper only.
>
> (10) As the instructions in regard to the Amaldaramed of Shamilat Rules have now been given in detail, all mutations pertaining to rule 5(b) and rule 9 of Notification No.2 of 1984 will now be attested by the Tehsildar.
>
> (11) All mutations made in contravention of the rules as explained above will be annulled. Immediate effect should, however, be given to the concessions and privileges provided in boon 4 in compliance with these instructions and no delay should be allowed to take place in the disposal of such cases.
>
> …
>
> …
>
> (13) The Governor of Kashmir and the Wazirs of Anantnag, Baramulla and Muzaffarabad will be responsible to see that this work is completed in every details within a period of 5 months from today."

32. It thus becomes axiomatic from the aforesaid Rules that the Rules provided for conversion of Khalsa lands into Shamilat and setting aside such land equivalent in size to the total cultivated land in a village. Out of the said Shamilat, the holders of cultivated lands in a village would jointly own that part of the Shamilat mutated under Rule 5. This part of the Shamilat constituted partible Shamilat and would vest in the individual holders on *pro rata* basis proportional to their holdings. The rest of the Shamilat would be for common use of the villagers as village roads,

tanks, shrines, burning ghats, burial grounds, village grazing fields etc. etc. This part of the Shamilat land would be mutated under Rule 4 and was not partible. It continued to vest in the State to be used for public purpose. Thus, the Shamilat land under Rule 5 and Rule 4 are not the same. In other words, whereas Shamilat land covered under Rule 5 represents that part of the Shamilat granted to a person proportionate to his holding in the Mahal on *pro rata* basis, Shamilat land covered under Rule 4 does not fall under that category – it continues to vest in the State and is not partible.

33. In the instant case, as per the minutes / decision of the Committee of high ranking Revenue Officers of Deputy Commissioners etc. held under the Chairmanship of Divisional Commissioner on 22.04.2010, on perusal of the relevant and original record, it was found that in terms of intikal No. 45 with respect to village Laripora Pahalgam of the year 1932-33 AD, an area of 2400 Kanals and 07 Marlas had been kept reserved as Shamilat 'Hasbi Rasad' (Pro rata). From the said area of 2400 Kanals 07 Marlas, an area of 373 Kanals 17 Marlas had been set apart as 'Nautor Jaiz', meaning thereby that these 373 Kanals and 17 Marlas of land had fallen jointly to the share of the villagers under Rule 5 and the rest, i.e., (2400 K, 07 M – 373 K, 17 M = 2026 K, 10 M) constituted Shamilat land under Rule 4 meant for common use for the purposes defined in Rule 4, which included grazing etc. Nautor on this land was called "Naujtor Najaiz" and there were specific directions that no Najaiz Nautor Kuninda should be allowed to remain in possession of such Nautor. Tehsildars and Naib Tehsildars were made personally responsible to see that the instructions are strictly enforced on the spot and that the orders are not recorded on paper only.

34. In the minutes, in paragraph (c), it is further disclosed that land measuring 156 Kanals 13 Marlas of the Shamilat land has come under the alignment of extension of Golf Course at village Laripora Pahalgam.

Though in this paragraph it is not disclosed whether these 156 Kanals and 13 Marlas constituted part of the 373 Kanals and 17 Marlas of land which had fallen jointly to the share of the villagers under Rule 5 and in respect of which "Bhiachara Mukamal" had been done, yet in paragraph (f) of the minutes, it is said that out of these 156 Kanals and 13 Marlas, only 61 Kanals and 13 Marlas, covered under the Khasra numbers mentioned in paragraph (g), were from the aforesaid 373 Kanals and 17 Marlas of land. Meaning thereby, that the remaining 96 Kanals (146 K, 13 M – 61 K, 13 M) were from that part of the Shamilat land out of 2400 Kanals and 07 Marlas which had continued to vest in the State in terms of Rule 4. Accordingly, the Committee concluded:

> i) That only an area measuring 373 Kanals 17 Marlas declared as 'Nautor Jaiz' and assigned Land Revenue in accordance with the law and standing orders is 'Shamilat' Hasab-e-Rasad / Jaiz Shamilat. Therefore, only an area of land measuring 61 Kanals 13 Marlas acquired for extension of Golf Course at Pahalgam and entered into the names of individual owners / occupants during Kharief 1971 are entitled for payment of compensation in accordance with LB 10 and the Collector shall have to record certificate in this behalf in respect of entitled land owners.
>
> ii) All such occupants who are in occupation of these 61 Kanals 13 Marlas acquired through various modes viz. alienation / transfer are also entitled for payment of compensation, irrespective of the fact whether they have or not have proprietary land in the estate.
>
> iii) All such occupants whether having or not having proprietary land in the estate who are in occupation of Shamilat land 'Nautor Jaiz' coming under alignment of extension of Golf Course other than 61 Kanals 13 Marlas 'Jaiz Shamilat' shall not be entitled to the payment of compensation."

35. The above position is, however, belied by the Collector, Land Acquisition, Anantnag, in his affidavit filed in the Court. In paragraph 4 of the affidavit, the Collector has made the following statement:

> "On examining the records minutely, it revealed that intikal No.45 of village Laripora Pahalgam of the year 1932-33 AD shows that an area of 2400K-07M had been kept reserved as

> Shamilat 'Hasab Rasad (Prorata) basis. Out of the said area, land measuring 373 Kanal – 17 Marlas had been set apart as 'Nautor Jaiz' and out of this area only land measuring 156K-13M of the Shamilat land has come under the alignment of acquired land for extension of Golf Course at Laripora Pahalgam which includes an area of 61K-13M 'Nautor Jaiz' (Section-5) comprising following survey Nos."

Thus, the Collector, Land Acquisition, in his aforesaid affidavit has clearly stated that 156 Kanals, 13 Marlas Shamilat land formed part of the 373 Kanals, 17 Marlas (Nautor Jaiz). In light of this statement made in the affidavit filed by the Collector, Land Acquisition, Antnang, before this Court in answer to the claims put forth by the petitioners in their respective writ petitions, the decision dated 22.04.2010 of the Committee of High Level Revenue Officers taken in its meeting headed by the Divisional Commissioner, Kashmir is clearly at variance.

36. If one believes what the Collector, Land Acquisition has stated in his affidavit, then the land on which the petitioners lay their claim has to be held to fall in that category of Shamilat which in revenue parlance is known as *dafa* 5. But in the very same breath, the Collector has stated that as regards 95 Kanals of Shamilat land (156 Kanals, 13 Marlas – 61 Kanals, 13 Marlas) coming in the acquired alignment, the same as per records is recorded as Shamilat u/s 4 (Najaiz) and are not entitled for payment of compensation.

37. Then the question arises whether the State / Collector can challenge the title of the land owners or their right to receive compensation after the final award is made under Section 12 of the Land Acquisition Act? As a matter of fact, learned counsel for the petitioners, citing and relying upon the judgments of the Supreme Court in ***Sharda Devi v. State of Bihar***, AIR 2003 SC 942 and ***M/s Ahad Brothers v. State of M. P***., AIR 2005 SC 355, and the judgment of the Allahabad High Court in ***Baru Mal v. State of U. P***., AIR 1962, Allahabad 61, submitted that once final award is

passed the State and / or the Collector is debarred from challenging the title of the land owners or their right to payment of compensation.

38. I have perused the aforesaid judgments. In ***Sharda Devi v. State of Bihar*** (supra) the law on the subject has been summed up in paragraph 40 of the judgment in the following words:

> "To sum up the State is not a 'person interested' as defined in Section 3(2) of the Act. It is not a party to the proceedings before the Collector in the sense, which the expression 'parties to the litigation' carries. The Collector holds the proceedings and makes an award as a representative of the State Government. Land or an interest in land pre-owned by State cannot be subject matter of acquisition by State. The question of deciding the ownership of State or holding of any interest by the State Government in proceedings before the Collector cannot arise in proceedings before the Collector [as defined in Section 3(c) of the Act]. It it was a government land there was no question of initiating the proceedings for acquisition at all. The Government would not acquire the land, which already vests in it. A dispute as to pre-existing right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the Civil Court for determination either under Section 18 or Section 30 of the Act. The reference made by the Collector to the Court was wholly without jurisdiction and the Civil Court ought to have refused to entertain the reference and ought to have rejected the same. All the proceedings under Section 30 of the Act beginning from the reference and adjudication thereon from the reference and adjudication thereon by the Civil Court suffer from lack of inherent jurisdiction and are therefore a nullity liable to be declared so."

In paragraph 41 of the judgment, however, the Supreme Court has made some important clarifications which are most relevant here. It reads thus:

> "40. However, we would like to clarify our decision by sounding two notes of caution. Firstly, the quashing of the proceedings under Section 30 of the Land Acquisition Act would not debar the State from pursuing such other legal remedy before such other forum as may be available to the State Government and on the merits and the maintainability thereof we express no opinion herein. Secondly, the situation in

> law would have been entirely different if the title of the appellant would have come to an end by any event happening or change taking place after the making of the award by the Collector as was the case in Dr. G. H. Grant v. State of Bihar, (1995) 3 SCR 576. The title of Dr. Ghosh had come to an end by change of law referable ti a date subsequent to the making of the award. In this context it was held – '…there is no reason why the right to claim a reference of a dispute about the person entitled to compensation may not be exercised by the person on whom the title has devolved since the date of the award and there is nothing in Section 30 which excludes a reference to the Court of a dispute raised by a person on whom the title of the owner of land has since the award devolved'."

In ***M/s Ahad Brothers v. State of M. P***. (supra), the Supreme Court has held the same view as in ***Sharda Devi v. State of Bihar*** (supra) in the following words:

> "In the present appeal, it is not the case of the respondent State that he title of the appellant had come to an end on happening of any event or change taking place after making of the award by the Collector. As stated in para 37 in the case of Sharda Devi (supra), the decision in this appeal does not preclude the State from pursuing such other legal remedy before any other forum, if available in law and if such a claim is maintainable in law…"

39. The argument raised by the learned counsel for the petitioners is thus answered by the very same judgments relied upon by him, i.e., the State is not precluded from pursuing a legal remedy before an appropriate forum. In the present case, however, the fact of the matter is that the State functionaries have not challenged the award so far in any forum. They are only contesting the reliefs prayed for in these writ petitions by disputing the ownership of the petitioners. They are not before the Court challenging the award as such. Looking at the peculiar facts and circumstances of the case and the allegations made in some of these petitions that some bureaucrats and influential persons have been not only paid compensation for the same kind of land, but have also been allotted land in exchange, which allegations have not been rebutted by the

respondents, it appears to be a case where public interest and patronage has gone hand in glove and the consequence is natural – loss to the public exchequer, tax payers money. The Chief Executive Officer, Pahalgam Development Authority, had sounded enough caution well in advance in this behalf, but the Collector seems to have not heeded to such caution. What is more astonishing is that the concerned respondents, except the Chief Executive Officer, Pahalgam Development Authority, have not chosen to file any effective replies in these writ petitions. That being the position, this Court would not act as a conduit to facilitate squandering of public money.

40. The fact remains, on the one hand the award has been finally made, on the other hand the ownership of the petitioners is denied, not in appropriate proceedings and before appropriate forum, though, this Court in its extra ordinary writ jurisdiction would not determine the question of ownership. These petitions are fundamentally based on the claim of ownership of the petitioners over the land in question and consequentially their right to receive compensation as determined by the Collector. In strict legal sense, the petitions, therefore, involve such disputed facts which cannot be determined in writ jurisdiction.

41. On a thoughtful consideration, I think it would be just and appropriate to leave the parties free to take recourse to appropriate remedial measures to establish their respective claims under the Act or otherwise. It is, however, made clear that if the award withstands the scrutiny of law in any maintainable remedial measure that may be chosen by the State / its concerned functionaries, the petitioners would be entitled to the compensation determined by the Collector in the final award. In that case, the petitioners would also be entitled to seek reference under Section 18 of the Act to the Civil Court, without insisting on the period of limitation. Further, as long as the award stands, the recovery notices

issued to some of the petitioners in these writ petitions and impugned herein cannot be allowed to be acted upon. The same shall be put on a hold for a period of two months from the date of this judgment during which period the State and its concerned functionaries would take a decision whether they would wish to seek appropriate remedy against the award in any forum, if any such remedy is legally available, or implement it as it is. In any case, if the State fails to take any such remedial measure within the aforesaid period of two months, the award would have to be acted upon by the Collector plus the petitioners would be entitled to seek reference in terms of Section 18 of the Act, if they so choose. It may also be mentioned here that petitioner no.2 in OWP no.837/2010 claims that his land measuring 1 Kanal comprising Khasra no.1693/224 too has been acquired and possession taken over, but his name has not been shown in the final award. He would be free to seek appropriate remedy before the Collector in terms of the provisions of the Act.

42. All these petitions together with the connected CMPs, are accordingly disposed of. Registry to place copy of the judgment on the records of each file.

43. In light of the above decision in the main writ petitions, nothing survives in the contempt petitions. The same are dismissed.

(Ali Mohammad Magrey)
Judge

Srinagar,
29.01.2014
Syed Ayaz, Secretary