

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Date: 29.09.2018

**LPAOW No.91/2013 c/w
LPAOW No.72/2014**

Villagers of Village Janglote & anr.	vs.	Financial Commissioner & ors.
State of J&K and anr.	vs.	J&K Educational Society & ors.

Coram:

**Hon'ble Mr. Justice Tashi Rabstan, Judge
Hon'ble Mr. Justice Sanjay Kumar Gupta, Judge**

Appearing counsel:

LPAOW No.91/2013

For appellant(s)	:	Mr. Rahil Raja, Advocate.
For respondent(s)	:	Mr. H.A. Siddiqui, Sr. AAG, for 1, 6 & 7. Mr. R.K. Jain, Advocate, for No.2. Mr. B. S. Salathia, Sr. Advocate with Ms Meenakshi Salathia, Advocate, for 3 & 4. Mr. M. K. Bhardwaj, Sr. Advocate with Mr. Ajay Abrol, Advocate, for No.5.

LPAOW No.72/2014

For appellant(s)	:	Mr. H.A. Siddiqui, Sr. AAG. Mr. S. S. Nanda, Sr. AAG. Mr. L. K. Moza, Sr. AAG.
For respondent(s)	:	Mr. R.K. Jain, Advocate, for No.1. Mr. B. S. Salathia, Sr. Advocate with Ms Meenakshi Salathia, Advocate, for 2 & 3. Mr. M. K. Bhardwaj, Sr. Advocate with Mr. Ajay Abrol, Advocate, for No.4.

<i>Whether approved for reporting?</i>	<i>Yes</i>
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Tashi Rabstan-J

1. The instant two Letters Patent Appeals, viz., LPAOW No.91/2013 filed on behalf of villagers of Village Janglote and anr; & LPAOW No.72/2014 filed on behalf of State and anr., are directed against the judgment and order of

learned Single Judge dated 04.09.2013 passed in OWP No.734/2005, whereby, while dismissing the writ petition, the learned Single Judge held the order of Financial Commissioner to be legally correct.

2. Since both these appeals have arisen out of a common judgment involving common question of facts and law, as such the same were considered and heard together and are being decided by this common judgment.

3. The facts-in-brief, as gathered from the writ record as well as appeal files, are that one Paras Ram, who was stated to be a resident of Chamb area, now in the illegal occupation of Pakistan, became a refugee in the year 1971 and lived in a Refugee Camp. His family consisted of three members, viz., Paras Ram (self), Kashmiri Lal (son) and (daughter). It is claimed that he occupied a portion of State land measuring 48 kanals covered under Kh. No.803/1 situate at Village Janglote, Tehsil Kathua. After the death of Paras Ram, the said chunk of land, as claimed, remained in the physical cultivating possession of his son Kashmiri Lal. Application moved by him to Assistant Commissioner, Kathua, that this piece of land be formally allotted to him as per rules and orders, was forwarded to Tehsildar, Kathua for processing the case of allotment of land. The Tehsildar called a report from the field agency through Naib Tehsildar and, on enquiry, it was found that as per revenue record, Khasra Girdawari of aforesaid piece of land was in the name of some Sh. Parveen Kumar, Sh. Lokesh Kumar 16 kanals, Sh. Rajesh Kumar 16 kanals and Sh. Naik Mohd. 16 kanals. And, when the aforesaid persons were contacted, they have categorically deposed in their affidavits that they are not in possession of said land, rather this land is in the physical possession of Kashmiri Lal. A detailed report was finally sent to Tehsildar, Kathua. After taking into consideration the report received by the Tehsildar Kathua, the aforesaid land came to be allotted to Kashmiri Lal considering him to be the head of family in terms of Govt. Order No.578/C of 1954 dated 07.05.1954. Thereafter, proprietary rights were also vested in him

vide mutation No.1853 under Government Order No.254/C of 1965 dated 07.07.1965, and, in this way, he become the absolute owner of said land.

4. That, thereafter, out of this 48 kanals of land, Kashmiri Lal sold 16 kanals to one Raj Daluja, son of Sh. Daswandi Ram Daluja, resident of Trikuta Nagar, Jammu, Chairman, J&K Educational Society, by a registered sale deed, duly registered by the Sub Registrar Kathua. He also sold another 16 kanals of land to one Ram Paul, son of Girdhari Lal, resident of Village Ladwal Kalan, Tehsil Hiranagar, by a registered sale deed duly registered by the Sub Registrar, Kathua and balance 16 kanals of land was sold to one Sh. Harbans Lal, son of Radha Krishan of village Haripur Brahamana, Tehsil Hiranagar, by way of a registered sale deed duly registered by Sub Registrar, Kathua.

5. As revealed by the records, Raj Daluja, Chairman, J&K Educational Society started construction of a school building on the land so purchased. Thereafter, an FIR No.21/2003 u/s 5(2) P.C Act read with section 161/120-B RPC came to be registered in Police Station, Vigilance Organization Jammu, against the then revenue officers, i.e., (1) Ashok Kumar Gupta, Tehsildar Kathua; (2) S.K. Sharma, Tehsildar Agrarian Reforms; (3) Dewan Singh, Naib Tehsildar; (4) Des Raj, Girdawar Circle IV and (5) Raghuwinder Singh, Patwari Halwa, Janglote, with regard to illegal allotment of 48 kanals of State land after hatching a criminal conspiracy by the above referred accused persons and Letter No.SSP/PRK/03/1035-37/J dated 07.07.2003 was also sent to Deputy Commissioner, Kathua by the Sr. Superintendent of Police, Vigilance Organization, Jammu. Accordingly, the Deputy Commissioner vide Order No.AM/102-07 dated 09.07.2003 directed maintaining of status quo on spot with further direction to Tehsildar Kathua and SHO concerned to implement the order on spot till legal status of the allotment of land-in-question is determined by the competent authority. It was further ordered that Tehsildar Kathua and Assistant Revenue Attorney would take further steps to file the appeals before

the competent authority against the orders of allotment and conferment of proprietary/ownership rights in favour of Kashmiri Lal.

6. Against the order dated 09.07.2003, a revision petition was filed by the J&K Educational Society and anr. (vendees), [respondents 1 to 3 in LPAOW No.72/2014], before Financial Commissioner, J&K, on the grounds that the land has been purchased validly by them through the sale deeds duly registered by the Sub Registrar; that they have started construction of school building and existence of the school, to be started, is in the larger interest of the people of the surrounding area; that they have not been provided with an opportunity of being heard and, as such, the order impugned is against the principles of natural justice; that the order impugned has neither been passed under any provision of law nor anything is forthcoming from it that Deputy Commissioner was authorized to pass such an order.

7. Financial Commissioner (Revenue) J&K, while accepting the revision petition, set aside the order of Deputy Commissioner vide order dated 25.05.2004. Financial Commissioner also held that the two appeals, if filed by the State before the Deputy Commissioner, Kathua with respect to the land-in-question, would also stand disposed of by the same order dated 25.05.2004.

8. Feeling aggrieved of the order of Financial Commissioner (Revenue) J&K dated 25.05.2004, State had preferred OWP No.734/2005 before this Court, which has been dismissed vide impugned judgment dated 04.09.2013. While dismissing the writ petition, the learned Single Judge held the order of Financial Commissioner to be legally correct. Hence, the present appeals on behalf of State of J&K and Villagers of Village Janglote, Kathua.

9. Learned counsel appearing for appellants have pleaded and argued that the judgment, impugned herein, is contrary to law and facts, hence the same is liable to be set aside and quashed. It is argued that allotment of State/evacuee property land can be made only for agricultural purposes in favour of such

displaced persons who were having agricultural land in POK and who are having agriculture as their main source of income. It is also urged that the allottee in the instant case was having no agricultural land in Chhamb nor agriculture was his main source of livelihood. Learned counsel have also averred that Financial Commissioner was not competent in law to entertain a revision petition directly against the order of Deputy Commissioner, Kathua, as under the Land Revenue Act, the order of Collector is appealable/revisable before the Divisional Commissioner and the order of Divisional Commissioner is further revisable by the learned Financial Commissioner. Thus, it has been vehemently argued that the very jurisdiction exercised by the Financial Commissioner is illegal, inasmuch as no revision is maintainable under the Land Revenue Act against an interim order nor the Financial Commissioner is justified in holding the appeals, filed before the Deputy Commissioner, as not maintainable. They also state that once the order passed by the Financial Commissioner is upheld by the Writ Court, there is no remedy available with the State-appellants to pass any fresh order as regards allotment order or as regards cancellation of the order of mutation passed on such allotment. The impugned order, on one hand, dismisses the writ petition and upholds the order of Financial Commissioner and, on the other hand, observes that it shall not come in the way of an aggrieved party to seek appropriate remedy, if they chose so.

10. Learned counsel appearing for private respondents, while relying upon a case, titled as, *M/s. Northern Plastic vs Hindustan Photo films, 1997 (4) SCC 452*, have argued that appellants in LPAOW No.91/2013, have no locus to file appeal as they are not the aggrieved persons. They plead that the orders passed by the Writ Court as well as Financial Commissioner are correct as per law and facts. It was argued that both the appeals are not maintainable, as the order has been passed by the Writ Court under Article 227 of Constitution of India read with Section 104 of Constitution of J&K. In support of their contention, learned

counsel have relied upon two cases, i.e., *Sansar Chand vs Som Dutt*, 2015 (1) *JKJ* 219 and *Raj Kumar vs Anil Kumar*, 2015 *JKJ* 438, wherein it is held that LPA against the order passed in a petition under Section 227 is not maintainable. Further, while relying upon a case, titled as, *State of Orissa vs Mamta Mohantay*, 2011 (3) 436 *SCC*, it is argued that the Collector/Deputy Commissioner was not competent to pass the order of status-quo, as such the same was bad in its inception.

11. Heard learned counsel appearing for both the sides, gone through the impugned judgment of Writ Court, order of Financial Commissioner and that of Collector.

12. It would be relevant to mention here that the order of Financial Commissioner came to be passed on 25.05.2004, whereas the Vigilance Organization, Jammu after conclusion of investigation submitted the final report/charge sheet on 28.05.2009.

13. We have given our thoughtful consideration to whole aspect of the matter. Firstly, we will deal with preliminary objection taken by counsel for respondents.

14. A preliminary question has been raised by private respondents with regard to locus-standi of villagers of Village Janglote to file the Letters Patent Appeal. As per law cited by the learned counsel for respondents, *aggrieved party* mean a person who is disappointed of a benefit which he might have received if some other order has been made. A person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title of something.

15. So far as LPAOW No.91/2013 is concerned, the same has been filed by the Villagers of Village Janglote, Kathua, stating that the land-in-question and

the adjoining land, which falls in Village Janglote, have illegally been occupied by Radha Swami Satsang Society, whereas this land had been identified to be acquired for establishment of University Campus of Jammu University. It is averred that the villagers were keen to have University established in their village and a proposal in this regard was also prepared by the Additional Deputy Commissioner. The aforesaid land is Banjar Kadeem, whereas the land to be acquired for University purpose would be cultivable land. As such the land-in-question and other land were to be given to the persons whose cultivable land was to be acquired for University purposes. Even villagers have donated 59 kanals free land for establishment of University Campus. So, they have vested interest and right to file the LPA. Not only this, it is because of their efforts that FIR came to be lodged in the Vigilance Department against the revenue agency.

16. After giving our thoughtful consideration, we are of the view that although leave to file LPA has been granted, but appellants are not aggrieved persons in the present circumstances of the case. Further, their plea that Radha Swami Satsang Society has illegally occupied the land in the village is also not tenable, because that dispute is not subject matter of present case. Also, proceedings for acquisition of land for construction of University Campus are yet to take place. Therefore, in view of above discussion, we are of the view that appellants have no locus to challenge the order of Writ Court. However, they are at liberty to seek redressal of their grievance, if any, before the appropriate forum and take legal recourse.

17. So far as LPA No.72/2014 is concerned, the same has been filed by Commissioner Secretary (Revenue) and Deputy Commissioner, Kathua. It is the admitted fact that prior to alleged allotment of land under Govt. Order No.578-C, the said land was State land. The Collector is the custodian of Government property including land, trees and water wherever situate. He has legal duty to protect the State land and see the same is not being encroached upon or illegally occupied by any person. Commissioner/Secretary (Revenue) is the head of

Revenue Department in executive functions. So it was only Government who was aggrieved by the illegal allotment of State land to Paras Ram, father of Kashmir Lal. Thus, Deputy Commissioner/Collector and Commissioner/Secretary Revenue were having statutory right to challenge the order passed by the statutory authority, i.e., Financial Commissioner under the Land Revenue Act. LPA filed by the State is, thus, maintainable.

18. Now the question arises for consideration is: whether LPA No.72/2014 filed by the State deserves to be allowed or not.

19. Admittedly, prior to alleged allotment in favour of Kashmiri Lal son of Late Paras Ram, the land-in-question was a State Land. After Kashmiri Lal made an application before the Assistant Commissioner (Revenue) for allotment of land-in-question, the same, as pleaded, came to be allotted in favour of Paras Ram, father of Kashmir Lal, on 23.01.2003 in terms of Cabinet Order No.578-C of 1954 dated 07.05.1954. Thereafter, the said land came to be mutated in favour of Kashmiri Lal on 18.02.003 vide mutation No.1853 under Government Order No.254 of 1965 dated 07.07.1965, thus proprietary rights were also vested in him, and, in this way, he become the absolute owner of said land.

20. As such, before proceeding further and for fair disposal of the case, it would be relevant to reproduce hereunder Rule 1, Rule 5(1) and Rule 15(1) of Allotment of Land to Displaced Persons Rules, 1954 notified vide Cabinet Order No.578-C of 1954 dated 7th May, 1954 (for short, Displaced Persons Rules of 1954):

“Rule-1. Eligibility of displaced families with agriculture as main source of livelihood to be rehabilitated on land.- Only such displaced families as already hold land in Pakistan-occupied territory of the State and whose main source of livelihood was income from such land shall be eligible to be settled on evacuee or Government Land.”

“Rule 5(1). Liability to cultivate allotted land personally and consequences of failure to do so.- (1) A displaced family who may hereafter be and such family as has already been allotted land, shall be bound to bring such land under personal cultivation within six months of the date of delivery of possession on allotment or the date of this Order, as the case may be, failing which such family shall forfeit its right to occupy such land.”

“Rule 15(1). Liability to pay rent for evacuee land.- (1) All displaced persons and persons who belong to unrehabilitated villages shall in respect of the evacuee land and all persons shall in respect of the Government land allotted to them, be liable to pay rent equal to the land revenue assessed at village rates including the cesses and other dues, for the time being in force.”

21. It would also be relevant to reproduce hereunder Government Order No.254 of 1965 dated 7th July 1965 regarding conferment of proprietary rights on allottees on State lands:

“Government Order No.254 of 1965 dated 7th July 1965.- The Government hereby grant proprietary rights on the State lands in favour of the displaced persons from non-liberated areas of the State who, in pursuance of Cabinet Order No.578-C of 1954 or any other orders issued prior to the C.O. No.578-C of 1954 about allotments in favour of such displaced persons, have been settled on such lands and partly on evacuee lands, subject to the condition that the allottees have continuously been holding the land from the date of the allotment and have been so recorded. The grantees shall be liable to the payment of land revenue assessed at village rates according to the class of soil which the land belonged to or has assumed on being cultivated, or, if there is no village rate available, to such land revenue as may be fixed by the Collector with regard to the assessment of similar land in the assessment circle in which such land is situated and also to the payment of cesses and other dues payable under any law for the time being in force.”

22. As per Rule-1 of Displaced Persons Rules of 1954 (supra) only such displaced families as already hold land in Pakistan-occupied territory of the State and whose main source of livelihood was income from such land shall be eligible to be settled on evacuee or Government Land. The main object of this rule is that only such displaced persons could be allotted agricultural land, who were having agricultural land in Pakistan-occupied territory of the State and whose main source of livelihood was income from such land.

23. In the present case, a perusal of appeal as well as writ records reveals that Kashmiri Lal had failed to prove that his father Paras Ram or he was having agricultural land in Pakistan-occupied territory of the State, i.e., Chhamb Sector and that their main source of livelihood was income from such land. Further, final report/charge sheet dated 28.05.2009 of Vigilance Organization, Jammu (Anneuxre “H” to LPAOW No.72/2014) reveals that on investigation it was found that Paras Ram, father of Kashmiri Lal, was serving in the Indian Army and he

being not an Agriculturist had already been allotted land measuring 30' × 75' for construction of house by the Government in the year 1979 at Village Chak Ludden. Once Paras Ram had already been allotted land by the Government in the year 1979 for construction of a house, in such circumstances neither Paras Ram nor his son Kashmiri Lal was entitled to any further allotment of State/evacuee land, that too when Paras Ram did not agitate at the relevant time in 1979 for allotment of agricultural land when he was allotted land by the Government for construction of house. Even Anita Devi, daughter of Paras Ram (sister of Kashmiri Lal) had made a statement that her father was never in the cultivating possession of land-in-question. During investigation it has also come on record that Register Jamabandi and Register Naqulat relating to land situated in Chhamb Sector for the year 1957-58, now under POK, seized during the course of investigation, has revealed that Sh. Paras Ram (father of Kashmiri Lal) was in possession of only 08 marlas of land, which was being cultivated by one Mulla, a protected tenant, besides land measuring 4.25 marlas had also devolved upon in his share, which was being cultivated by one Punnu. As per this factual position, Paras Ram cannot be said to be an agriculturist.

24. Appeal file further reveals that as per revenue record, although Khasra Girdawari of land-in-question was in the name of some Parveen Kumar, Lokesh Kumar, Rajesh Kumar and Naik Mohd., but they were in illegal possession of said land. Investigation of Vigilance Organization reveals that Kashmiri Lal in connivance with revenue officials/officers obtained affidavits of these persons against some consideration that they were not in possession of said land. Thereafter, thereby manipulating their statements, it was shown that the land-in-question was, in fact, in the physical possession of Paras Ram and Kashmiri Lal.

25. Further, while making allotment of land-in-question in favour of Paras Ram, the revenue agency had relied upon the statements of ten persons including the Village Headman and Chowkidar of Village Janglote. However, during investigation by the Vigilance Organization, witnesses, namely, Hans

Raj, Sansar Chand, Kaka Ram and Lal Chand had categorically denied having made any such statement before the revenue officials, nor did they sign any statement and that the signatures attributed to them were forged. It has also come on record that the statements of these witnesses have also been corroborated by the hand-writing expert. In the given circumstances, it can be easily concluded that the case of Paras Ram/Kashmiri Lal does not come within the purview of Rule-1 of Displaced Persons Rules of 1954.

26. Now we come to Rule-5(1) of Displaced Persons Rules of 1954. As per this Rule, a displaced family is bound to bring allotted land under personal cultivation within six months of the date of delivery of possession on such allotment. In the present case, the land-in-question came to be allotted by the Tehsildar concerned in favour of Paras Ram on 23.01.2003 and was mutated in favour of his son, Kashmiri Lal on 18.02.2003. Thereafter, within a period of one-month, Kashmiri Lal sold the land to respondents 1 to 3 in LPAOW No.72/2014 vide three different sale deeds dated 8.03.2003 and two dated 20.02.20003, who thereafter started raising construction of a big school.

27. In terms of Rule 5(1), Kashmiri Lal was bound not to sell the land-in-question immediately after its allotment, rather he was to bring the said land under personal cultivation. Since Kashmiri Lal had failed to bring the allotted land-in-question under personal cultivation within six months of the date of delivery of possession on allotment or the date of order, rather he sold the said land just within one and a half months of such allotment, as such he also failed to satisfy the conditions as laid down in Rule 5(1) (supra). Therefore, his right automatically gets forfeited over the allotted land-in-question and the allotment order was required to be cancelled forthwith. It also proved that the main source of livelihood of Kashmiri Lal was not the income from agricultural land, nor of his father Paras Ram, as he was also serving in the Indian Army.

28. The purpose of Act and the Rules thereunder for allotment of land to displaced persons was to provide them with the source of livelihood through

agriculture by allotting them land either *Abi* (irrigated) or *Khushki* (unirrigated). In the instant case, the land allotted was a *Gair Mumkin Khud*, which cannot be used for agriculture. Moreover, Kashmiri Lal had no intention to use the same for any agricultural purpose and the whole process of allotment and subsequently disposal of allotted land in favour of respondents 1 to 3 in LPAOW 72/2014 was only an eye-wash, in total violation of the provisions of law so as to give wrongful benefit to respondents 1 to 3 through Kashmiri Lal thereby causing direct and substantial loss wrongfully to the State, as the land-in-question is a prime land having huge monetary value at the market rate. Once the basic action of allotment becomes illegal and void, then all subsequent actions automatically become illegal and void.

29. In the given circumstances, since both Paras Ram and Kashmiri Lal have failed to comply with the provisions of Rule-5(1) of Displaced Persons Rules of 1954, as such they were not entitled to the allotment-in-question.

30. Now come to Rule 15(1) of Displaced Persons Rules of 1954. As per this rule, a displaced person in respect of the allotted Government land is liable to pay rent equal to the land revenue including the cesses and other dues. Since Kashmiri Lal instead of bringing the allotted land-in-question under personal cultivation as per Rule-5(1) (supra), had sold the same immediately after its allotment and attestation of mutation in his favour, the question of paying rent equal to the land revenue does not arise at all and, in this way, he did not satisfy this condition too, in absence of which the allotted land-in-question was required to be cancelled forthwith.

31. Thus, the afore-discussed rule position clearly reveals that both Paras Ram and Kashmiri Lal had grossly failed to satisfy the conditions of allotment and basic requirements as laid down in Cabinet Order dated 07.05.1954, as such they were not eligible for the allotment of State land-in-question. Even the investigation carried out revealed that they were not entitled to the allotment-in-

question. Thus, it seems the allotment as well as attestation of mutation has illegally been done in complete disregard to the rules, afore-quoted. Therefore, on this score alone, the appeal filed by the State deserves to be allowed.

32. Now we come to Government Order No.254 of 1965 dated 07.07.1965, afore-quoted, in terms of which proprietary rights came to be conferred in favour of Kashmiri Lal in respect of the State land-in-question.

33. As per this Government order, proprietary rights on the State land have to be granted in respect of a displaced person pursuant to allotment of State land on the basis of Cabinet Order dated 07.05.1945 (supra), subject to the condition that such allottee/displaced person has continuously been holding the land from the date of allotment and it has been so recorded, besides he is also liable to pay land revenue; meaning thereby the proprietary rights were to be granted only if the displaced person has continuously been holding the land from the date of allotment and it has been so recorded in the revenue records, besides he has also been paying the land revenue in respect of the allotted land.

34. However, in the present case, the land-in-question came to be allotted in favour of Paras Ram, father of Kashmiri Lal, on 23.01.2003 after his death, and mutation in favour of Paras Ram or Kashmiri Lal was to be attested only if it were proved that the allottee had continuously been holding the land from the date of allotment and it has been so recorded in the revenue records. It is very surprising that just within a period of less than one month, i.e., within 26 days of allotment, the mutation in respect of land-in-question came to be attested in favour of Kashmiri Lal on 18.02.2003. In the given situation, no question arises for holding the land-in-question continuously after allotment or recording of the same in the revenue records or paying the land revenue in respect of allotted land-in-question as mandated by law before attestation of mutation. Not only this, Kashmiri Lal within a period of just one and a half months of attestation of mutation, sold the land-in-question to respondents 1 to 3 in LPAOW No.72/2014 vide three different sale deeds dated 8.03.2003 and two dated

20.02.20003, who thereafter started raising construction of a big school. Even otherwise, as discussed hereinabove, neither the case of Paras Ram nor his son Kashmiri Lal falls within the purview of Cabinet Order dated 07.05.1954. Thus, one can easily understand that this could not have been done without the active connivance of officers/officials of Revenue Department and that is why both the Tehsildars, who made allotment and attested mutation in respect of land-in-question in favour of Kashmir Lal, came to be prematurely retired from service and criminal proceedings were initiated against the concerned revenue officials/officers. Further, neither Tehsildar, Kathua nor Tehsildar (AR), Kathua were competent to make allotment in favour of Paras Ram and attest mutation in respect of land-in-question in favour of Kashmiri Lal in complete violation of provisions of Cabinet Order dated 07.05.1954 and Government order dated 07.07.1965. Also, Kashmiri Lal being an ordinary person cannot have such an influence in the revenue department. Otherwise too, he is not the actual beneficiary, rather in this whole conspiracy the actual beneficiaries are respondents 1 to 3 in LPAOW 72/2014 and it seems their influence might have worked. Thus, allotment as well as attestation of mutation cannot be said to have been legally made.

35. Since Paras Ram and Kashmiri Lal had also failed to satisfy the conditions as laid down in Government Order dated 07.07.1965 (supra) regarding conferment of proprietary rights of allotted State land-in-question, as such on this score too LPAOW No.72/2014 deserves to be allowed.

36. Now we deal with the contention of learned counsel for respondents 1 to 3 in LPAOW No.72/2014 that the order passed by the Deputy Commissioner is an order passed in terms of Section 11 of the J&K Land Revenue Act, Svt., 1996, whereas the learned counsel for appellants argued that the same has not been passed in terms of said Section, rather it is an order passed purely on administrative side.

37. Therefore, before proceeding further, it would be relevant to reproduce hereunder order dated 09.07.2003 passed by the Deputy Commissioner, Kathua:

**“OFFICE OF THE DEPUTY COMMISSIONER,
COLECTOR, KATHUA.**

Case FIR No. 21/2003 u/s 5(2) .P.C Act Section 161 and 120-B RPC police
Station Vigilance organization, Jammu.

ORDER

“Whereas, Senior Superintendent of Police, Vigilance Organisation Jammu vide his office letter No.SSP/PRK/1033-37/J dated 07.07.2003 intimated that a case FIR No.21/2003 u/s 5(2) P.C. Act, Section 161, 120-B has been registered in Police Station, Vigilance Organization Jammu against S/Sh. (1) Ashok Kumar Gupta, Tehsildar Territorial, (2) Shiv Kumar Sharma, Tehsildar Agr. Reforms, (3) Dewan Singh, Naib Tehsildar, (4) Des Raj Girdawar Circle-IV and Raghuwinder Singh, Patwari Halqa Janglote Kathua;

Whereas, it has also been intimated that investigation in the case established illegal allotment of 48 kanals of State Land situated in village Chak Ludden, Tehsil Kathua in favour of one Kashmiri Lal Bali S/o Paras Ram Bali after hatching a conspiracy;

Whereas, the Vigilance Organization has also referred the matter to this office to take further necessary action under law regarding illegal allotment of said land;

Whereas, a report with regard to position of the record and position obtaining on spot was called from the Tehsildar Kathua and Tehsildar Kathua vide his office letter No.OQ/279 dated 09.07.2003 has reported that land allotted in favour of Sh. Kashmiri Lal S/o Sh. Paras Ram R/o Chak Ludden comprises Khasra No.803/1 of village Janglote and it has also been intimated that some construction is taking place on spot over the land in question;

Whereas, order on the action of Tehsildar Kathua in making allotment and subsequent order conferring ownership rights in favour of Sh. Kashmiri Lal passed by the Tehsildar (AR) Kathua can only be passed after an appeal is filed before the competent authority with regard to the eligibility of the allottee in the light of the rules and orders on the subject;

Whereas, there is apprehension that the interested persons may change the status of the land by raising structures over it, thereby defeating the purpose of further action.

Therefore, keeping in view the interest of the State and in public interest at large, it is ordered that status-quo be maintained and till the legal status of the allotment orders, subsequent orders conferring ownership rights under Govt. Order No.254-C and the sale deeds, is determined by the competent authority, the construction be stopped over the aforementioned land measuring 48 kanal falling in Khasra No.803/1 situated in village Janglote, Tehsil and District Kathua. Tehsildar Kathua and SHO Kathua will get the

order implemented forthwith. It is further ordered that the Tehsildar Kathua and Assistant Revenue Attorney shall also take further steps to file the appeals against the orders under reference before the competent authority.

Deputy Commissioner
Collector Kathua

No.AM/102-07 Dated 9/7/2003

Copy submitted to the:

1. Financial Commissioner, Revenue, J&K Srinagar for information. This is in reference to Sr. Superintendent of Police, Vigilance Organization, Jammu's letter No.SSP/RPK/03/1035-37 dated 07.07.2003
2. Divisional Commissioner, Jammu for information
3. Sr. Superintendent of Police, Vigilance Organization, Jammu, with reference to the letter mentioned above.
4. Superintendent of Police, Kathua, - for information and necessary action.
5. Tehsildar, Kathua for immediate compliance.
6. SHO P/S Kathua for immediate compliance."

38. The format as well as context of the order, under which it has been passed, itself shows that the same has not been passed under Section 11 of J&K Land Revenue Act, Svt., 1996, rather the same appears to have been passed on administrative side by the Collector/Deputy Commissioner after receiving letter of Senior Superintendent of Police, Vigilance Organization, vide his office letter dated 07.07.2003 intimating that a case FIR No.21/2003 u/s 5(2) P.C. Act, Section 161, 120-B has been registered in Police Station, Vigilance Organization Jammu against S/Sh. (1) Ashok Kumar Gupta, Tehsildar Territorial, (2) Shiv Kumar Sharma, Tehsildar Agr. Reforms, (3) Dewan Singh, Naib Tehsildar, (4) Des Raj Girdawar Circle-IV and Raghuwinder Singh, Patwari Halqa Janglote Kathua, regarding illegal allotment of 48 kanals of State Land situate in village Chak Ludden, Tehsil Kathua in favour of one Kashmiri Lal Bali, son of Paras Ram Bali after hatching a conspiracy.

39. The Collector/Deputy Commissioner in his order dated 09.07.2003 has specifically stated that the order on the action of Tehsildar Kathua in making allotment and subsequent order conferring ownership rights in favour of Sh.

Kashmiri Lal passed by the Tehsildar (AR) Kathua can only be passed after an appeal is filed before the competent authority; meaning thereby the Collector/Deputy Commissioner was himself of the view that unless an appeal under Section 11 of the Land Revenue Act is filed before the competent authority, no order on the subject controversy could be passed. Therefore, order dated 09.07.2003 was purely an order on administrative side till the appeals under Section 11 of the Act are filed by the State.

40. Not only this, even in the concluding paragraph of order dated 09.07.2003, the Collector/Deputy Commissioner, while making an order of status-quo in the interest of State and in public interest at large, had directed the Tehsildar Kathua and Assistant Revenue Attorney to take further steps to file the appeals against the orders under reference; meaning thereby the Collector/Deputy Commissioner had directed the concerned authority to file appeals in terms of Section 11 of J&K Land Revenue Act against the orders of Tehsildar Kathua in making allotment and subsequent order conferring ownership rights in favour of Sh. Kashmiri Lal passed by the Tehsildar (AR) Kathua. Thus, it can be safely held that order dated 09.07.2003 was just an order on administrative side and not under Section 11 of the Act.

41. Further, admittedly, at the relevant time, no appeal under Section 11 of the J&K Land Revenue Act had been filed by the State before the Collector/Deputy Commissioner, in which he had passed order dated 09.07.2003, rather the said order was passed on administrative side after receiving the letter of Senior Superintendent of Police, Vigilance Organization, Jammu. Otherwise too, the Collector/Deputy Commissioner exercises inherent powers of a Civil Court for protection of Government property from being destroyed or being misused or converted in any other form. He being Custodian of such property is duty bound to protect the same from being transferred illegally. In the instance case too, since there were grounds to believe that the land-in-question has been allotted and mutated illegally and, thereafter, transferred illegally in favour of

respondents 1 to 3 in LPAOW No.72/2014, in such a situation the Collector/Deputy Commissioner had no option but to pass the order of status-quo on administrative side till the appeals in terms of Section 11 of J&K Land Revenue Act are filed by the concerned authority. In such circumstances, how and on what basis respondents 1 to 3 in LPAOW No.72/2014 could claim that the order of Deputy Commissioner was under Section 11 of the Land Revenue Act. Even, the Financial Commissioner and the learned Single Judge have erred in law in holding so that the order of Collector/Deputy Commissioner was under Section 11 of the Land Revenue Act and that the revision filed against the said order was maintainable. Therefore, on this ground too, LPAOW No.72/2014 deserves to be allowed.

42. There is another aspect of the matter which cannot lose sight of. As per revenue record, the land-in-question has been recorded as Gair Mumkin Khud. Even in the allotment order, there is a mention that the nature of said land is Gair Mumkin Khud. Whereas, as per Rule 2 of Displaced Persons Rules of 1954, only abi (irrigated) or khushki (unirrigated) land can be allotted to the displaced persons. Since, the land-in-question being Gair Mumkin Khud has been allotted and mutated in favour of Kashmiri Lal illegally against the provisions of rules, referred to above, the allotment as well as attestation of mutation itself becomes illegal, hence is void-ab-initio and any consequence thereof of the above said land also automatically becomes void-ab-initio. Therefore, on this ground also, LPAOW No.72/2014 deserves to be allowed.

43. Finally, learned counsel for respondents argued that since the LPA has been filed against the order passed under Section 104 of the Constitution of J&K (Article 227 of Constitution of India) in OWP No.734/2005, as such the appeal is not maintainable.

44. Before dealing with this contention, it would be appropriate to reproduce hereunder subject matter/prayer of petitioner-State in OWP No.734/2005:

“Petition under Section 104 of the Constitution of Jammu and Kashmir read with Section 103 of the Constitution of J&K for quashing the order dated 25.05.2004 passed by the respondent No.1 on Revision File No.204/FC/AP titled J&K Educational Society and others vs Deputy Commissioner – Collector Kathua and others and for any other order or direction which this Hon’ble Court may deem proper in the circumstances of the case.”

45. It would also be relevant to reproduce hereunder Section 103 of the Constitution of Jammu & Kashmir:

“103. Power to issue certain writs.- The High Court shall have power to issue to any person or authority, including in appropriate cases any Government within the State, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purpose other than those mentioned in clause (2-A) of Article 32 of the Constitution of India.”

46. A perusal of afore-quoted subject matter/prayer in OWP No.734/2005 leaves no doubt that this writ petition has also been filed under Section 103 of the Constitution of J&K, which corresponds to the provisions of Article 226 of the Constitution of India. Even, in paragraph 8(g) of OWP No.734/2005, the petitioner-State has specifically averred “that the petitioner has not filed any other writ petition against the order dated 25.5.2004 in this Hon’ble Court or any other Court of the Country”; which itself leads to the conclusion that OWP No.734/2005 came to be filed under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu & Kashmir. In any event, a petition under Article 227 cannot be called as a writ petition. In this context, what is held by the Apex Court in paragraph-32 of the judgment delivered in *Shalini Shyam Shetty vs Rajendra Shankar Patil*, (2010) 8 SCC 329], is reproduced hereunder:

“No writ petition can be moved under Article 227 of the Constitution nor can a writ be issued under Article 227 of the Constitution. Therefore, a petition filed under Article 227 of the Constitution cannot be called a writ petition. This is clearly the Constitutional position. No rule of any High Court can amend or alter this clear Constitutional scheme.”

47. Now the question arises for consideration is: whether a Letters Patent Appeal against an order passed under Article 226 and/or under Article 227 is

maintainable or not, and, whether such a right can be curtailed without any express provision under the statute.

48. In a leading case of "*Umaji Keshao Mesh-ram v. Smt. Radhikabai*", reported in (1986) *Supp SCC 401*, the Supreme Court has held that if the judgment appealed against is under Article 226 it is maintainable, if it is under Article 227 it is barred and if it is both under Articles 226 and 227, it is to be treated as one under Article 226 so as not to deprive the appellant of his valuable right of appeal, relevant paragraph whereof is reproduced hereunder:

"107. Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of *Hari Vishnu Kamath v. Syed Ahmad Ishaque* and others before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that Rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226."

49. In the instant case too, OWP No.734/2005 had also been filed under Section 104 of the Constitution of J&K (Article 227 of the Constitution of India) as well as under Section 103 of the Constitution of J&K (Article 226 of the Constitution of India). Thus, the cumulative effect of pleadings of writ petition is that OWP No.734/2005 by all means is a petition under Article 226 of the Constitution of India read with Section 103 of the Constitution of J&K in the light of judgment of Apex Court, referred to hereinabove.

50. Further, the Apex Court in *Kanhaiyalal Agarwal vs Gwalior Sugar Co. Ltd.*, reported in (2001) 9 *SCC 609*, has held that where the facts justify filing of petition both under Article 226 and Article 227 and a petition so filed is

dismissed by the Single Judge on merits without stating under which provision the matter had been decided, appeal against the said order is maintainable.

51. In the instant case too, the learned Single Judge while dismissing the writ petition has not specifically stated in the impugned judgment that power is being exercised in terms of Section 104 of the Constitution of J&K or Section 103 of the Constitution of J&K. Therefore, we do not find any force in the contention of learned counsel for respondents that OWP No.735/2005 had been filed under Section 104 of the Constitution of J&K (Article 227 of the Constitution of India). Therefore, in the given circumstances, appeal against the order of learned Single Judge is maintainable.

52. Further, procedural laws are enacted to advance the cause of justice. Procedural laws cannot be permitted to assume the shape of phantom, who will devour the angel of justice. Procedural laws are made to ensure that justice is done fairly and objectively. On bare perusal of Writ Court order dated 04.09.2013 passed in OWP No.734/2005, it is evident that at various places in the judgment of Writ Court, it has categorically been written that this is a writ petition; even from the perusal of taxonomy of title of writ petition before Single Judge and order of Writ Court under challenge, it is evident that the order has been passed in the shape of disposal of writ petition under Article 226 of Constitution of India read with section 103 of Constitution of J&K State. Merely by writing petition under Section 104 does not make it a petition to have been filed under Section 104 of the Constitution of J&K. The argument of respondents that LPA has been filed against the order passed under Article 227 of Constitution of India is, thus, devoid of any merit and not tenable, and is rejected outrightly.

53. Viewed thus, the Financial Commissioner was not justified in setting aside the order of Deputy Commissioner, Kathua and has exceeded its limits by disposing of the appeal(s), if any, filed before the Deputy Commissioner, that too merely on conjecture and surmise as pleaded by respondents 1 to 3 in

LPAOW No.72/2014, without summoning the record of appeals and examining the same. Learned Single Judge too has erred in law while dismissing the writ petition filed by the State and holding the order made by the Financial Commissioner to be legally correct.

54. Therefore, in view of what has been discussed above, we deem it proper to allow LPAOW No.72/2014 and it is ordered accordingly. Consequently, the judgment and order of Writ Court dated 04.09.2013 and that of the Financial Commissioner dated 25.05.2004 are hereby set aside and quashed. As a result of this, the order passed by the Collector/Deputy Commissioner, Kathua dated 09.07.2003 is upheld. State, through appellant No.1 is directed to forthwith take control of the land-in-question, secure it by required means and dismantle/raze any unauthorized construction over it, thereby restoring the original position of land-in-question as it was before being allotted.

55. Further, it is ordered that the appeals pending before the Collector/Deputy Commissioner, Kathua shall stand revived, who is hereby directed to decide the same on merits and strictly in accordance with the provisions of law on the subject, without being influenced by any observations made herein, within a period of three months from the date of receipt of this judgment against proper receipt. Before deciding the appeals, he shall afford opportunity of hearing to both the parties. Parties to appear before the Collector/Deputy Commissioner, Kathua on 31st October, 2018. It is further directed that within a period of one week from the date of receipt of this judgment, the Collector shall inform the Registrar (Judicial) of this Court in a sealed cover by submitting a compliance report as regards the direction issued hereinabove to take possession of the land-in-question.

56. Finally, before parting with this judgment, we are constrained to state that the inquiry conducted by the Vigilance Organization, Jammu, in this matter leaves much to be desired and has many lacunas in it. It also emerges from the record that the investigating officers of the Vigilance Organization have failed

to perform their duties honestly and had not dealt with this case in the manner in which it ought to have been. We say so because the real and actual beneficiaries of the said allotment, i.e., respondents 1 to 3 in LPAOW No.72/2014, have not been arrayed as co-accused in this case despite the fact that all acts of omission and commission have been done directly or indirectly to give them the benefit. Therefore, it is hereby directed that the Vigilance Organization shall re-investigate this matter and conclude the same within a period of two months from the date of receipt of this judgment and after completing the investigation, shall file a fresh Challan before the competent Court of Law in this regard in the light of directions given above, thereby making the beneficiaries of land-in-question as co-accused. However, the direction given above shall not be taken as conclusion of this investigation.

57. Connected miscellaneous application(s), accordingly, stand disposed of.

58. LPAOW No.91/2013 being not maintainable is hereby dismissed. Connected miscellaneous application(s) shall stand disposed of accordingly.

59. Registrar (Judicial) is directed to forthwith send copies of this judgment to Chief Secretary of the State and the Senior Superintendent of Police, Vigilance Organization, Jammu.

Jammu
Date:29.09.2018
(Anil Sanhotra)

(Sanjay Kumar Gupta)
Judge

(Tashi Rabstan)
Judge

I pronounce this judgment today in terms of Rule 138(4) of the Jammu and Kashmir High Court Rules, 1999.

Jammu
29.09.2018

(Sanjay Kumar Gupta)
Judge