
(2018) 05 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : OWP NO.65 OF 2003

RAVINDER SAWHNEY

APPELLANT

Vs

JAMMU DEVELOPMENT AUTHORITY & ORS

RESPONDENT

Date of Decision : 07-05-2018

Acts Referred:

Jammu and Kashmir State Evacuees? (Administration of Property) Act, Samvat, 2006
— Section 14A, 14A(1)
Alienation of Land Act, 1995 — Section 5(2)
J&K Development Act, 1970 — Section 18(4)

Citation : (2018) 05 J&K CK 0012

Hon'ble Judges : TASHI RABSTAN

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Through the medium of this petition, the petitioners are seeking:

i. a Writ of Certiorari quashing Order dated 10.11.2011 in File No.24/Revision of 2010 passed by the Divisional Commissioner, Jammu, respondent

No.6 herein, whereby the revision petition filed by the Jammu Development Authority came to be allowed and the order of Settlement Officer with

powers of Collector Jammu dated 07.05.2010 came to be set aside along with mutation No.246 and subsequent mutations/entries in the revenue

record, if any. Vide order dated 07.05.2010 passed by the Settlement Officer, the appeal filed by the Jammu Development Authority against ex-parte

order on Mutation No.246 of Village Thanger, Tehsil Jammu came to be dismissed on the ground that the JDA could not produce the certified copies

of the record attached with the memo of appeal.

ii. a Writ of Certiorari quashing order dated 09.03.2012 in File No.153/FC/AP of 2011 passed by the Financial Commissioner, Jammu, respondent

No.5 herein, whereby Financial Commissioner accepted the reference made by the Divisional Commissioner, Jammu, thereby holding the order dated

06.04.1985 to be illegal and Mutation No.246 to be nullity in the eyes of law.

iii. a Writ of Mandamus commanding the respondents to sanction and approve the plan submitted before Jammu Development Authority, respondent

No.2 herein, in the year 1996 and also allow them to raise construction as per the said plan.

2. The facts, as projected in the petition, are that in reference to Letter No.FC(S)ST-66/83 dated 06.04.1985 of Financial Commissioner, J&K, the

Government of Jammu & Kashmir vide Government Order No.197-Rev(LB) of 1985 dated 24.06.1985, issued by Secretary to Government, Revenue

Department, accorded sanction under Clause (a) of sub-section (1) of section 14-A of the Jammu and Kashmir State Evacuees' (Administration of

Property) Act, Samvat, 2006 for exchange of land measuring 19 kanals and 01 marla comprising under Khasra Nos.763/m, 794/m, 776/m, 777/m,

795/m, 799/m and 800/m, situated in Village Mokawal, Tehsil Jammu, belonging to and in possession of displaced persons, namely, Mohammad Ashraf

(deceased), Mohammad Anwar, Abdul Qayoom, Skindar Parvez, Mohammad Aslam and Shaukat Ali, sons of Ahmad Din (deceased) with the State

land measuring 19 kanals 01 marla out of Khasra No.256 situate in Village Thanger, Tehsil Jammu.

3. It is averred that possession of said land was also handed over to the above-referred beneficiaries and Mutation No.246 was also attested in their

favour in respect of the exchanged land. It is averred that in the year 1989 Mohd. Anwar and others sold 18 kanals and 01 marla land to some Gurjeet

Singh, Shiv Kumar, Rajan Gupta, Sat Pal Gupta and other, who in turn sold the same to some Sanjay Kumar, Kamal Nanda, Ashok Kumar, Sushma

Kapoor. Ultimately, the said land came to be sold to the petitioners herein in the years 1992 and 1993 and Mutation Nos.599, 600, 601, 602, 603, 604,

605, 606, 609 and 610 came to be attested in their favour in the year 1993 itself in respect of said land. Further, it is averred that rest of the land, i.e.,

01 kanal is also in possession of petitioners herein and an entry to this effect has also been made in the revenue record.

4. It is averred that after getting legal title upon the land, the petitioners herein applied before the JDA for sanction of map for development purposes

and, accordingly, they were issued as many as seven No Objection Certificates from Director Land Management, JDA, Assistant Commissioner, Nazool, Public Works Department, Sewerage Department and Flood Control Department. It is averred that when the petitioners were not granted permission for raising construction, they filed OWP No.65/2003 against the JDA on 04.02.2003, which came to be allowed vide judgment and order dated 12.07.2004 with a direction to the respondents not to obstruct the petitioners from raising construction over the land-in-question subject to the sanction/permission by the competent authority, if required under any law. It is averred that against the said judgment, the JDA filed LPA No.87/2004, which came to be disposed of on 02.04.2008 with a direction to the petitioners either to approach the Civil Court or the authority concerned. Against the said order, the petitioners filed a Review Petition No.07/2008, but the same came to be dismissed on 10.11.2008. It is averred that feeling aggrieved the petitioners filed SLP Nos.17819-17820/2009 before the Supreme Court.

5. Further, it is averred that during the pendency of SLP, the JDA filed an appeal before the Settlement Officer, Jammu against Mutation No.246, originally attested in favour of Mohd. Anwar and others in the year 1985 in respect of land-in-question, situate in Village Thanger, Tehsil Jammu, which was allotted to them by the Government vide order dated 24.06.1985 in exchange of their land situated in Village Mokawal, Tehsil Jammu. However, the Settlement Officer dismissed the appeal vide order dated 07.05.2010. Aggrieved of the same, the JDA filed a revision petition before the Divisional Commissioner, Jammu and the Divisional Commissioner vide order dated 10.11.2011 allowed the same and set aside the order of Settlement Officer dated 07.05.2010 along with mutation No.246 and subsequent mutations/entries in the revenue record, if any, and made a reference to the Financial Commissioner, Jammu in terms of Section 15(3) of the J&K Land Revenue Act, 1996. It is further averred that the Financial Commissioner vide its order dated 09.03.2012 accepted the reference made by the learned Divisional Commissioner, Jammu.

6. As regards the SLPs filed by the petitioners herein before the Supreme Court in the year 2009, it is averred that vide order dated 14.08.2013 the Supreme Court while allowing SLP Nos.17819-17820/2009 (supra), set aside the orders dated 02.04.2008 and 10.11.2008 passed by the learned

Division Bench of this Court in LPA No.87/2004 and Review No.07/2008, and also set aside the order dated 12.07.2004 passed by a coordinate

Bench of this Court in SWP No.65/2003 and remitted the matter to this Court for fresh disposal of the writ petition filed by the petitioners herein with

liberty to file an application for amendment of the writ petition so as to challenge the legality of the orders passed by the Divisional Commissioner and

the Financial Commissioner and also place on record additional documents. Respondents herein were also given liberty to file the amended written

statements and file additional documents. Thus, in the given circumstances, the present amended writ petition came to be filed on 03.03.2014 before

this Court as per the direction of Supreme Court.

7. Learned counsel appearing for petitioners contended that the JDA neither challenged before any forum nor disputed the title of petitioners or Mohd.

Anwar and others as regards the transfer of land by the Government in favour of Mohd. Anwar and others, rather the claim of JDA is that the land

transferred by the Government is a different piece of land and not the land-in-question. He further contended that settlement record as well as

demarcations made by different revenue agencies clearly demonstrate that whole of the land falling under Khasra No.256 of Village Thanger, Jammu

is in occupation and ownership of different persons including the petitioners herein and there is no vacant land available in the said khasra number, as

such no question arises as regards the claim of JDA that the land allotted in favour of Mohd. Anwar and others is a different piece of land under the

said khasra number. Learned counsel further contended that the factum of possession as regards the land-in-question has also been affirmed by the

State of J&K in its counter affidavit dated 10.03.2011 filed before the Supreme Court. He, thus, contended that the Financial Commissioner had no

power or jurisdiction to question in any manner the validity of 1985 Government order.

8. Learned counsel appearing for petitioners further contended that the JDA has no locus standi to challenge Mutation No.246 as it was only the

reflection of Government Order No.197-Rev(LB) of 1985 dated 24.06.1985, thus no illegality can be said to have attached to the mutation. He further

contended that the entries in respect of 101 kanals and 18 marlas of land, which the JDA claims to have been transferred to it by the Nazool

Department, have not been made in the revenue records since 1973 onwards.Â

9. Objections have been filed on behalf of Jammu Development Authority averring therein that the land measuring 101 kanals 18 marlas bearing

Khasra No.256(min) at Village Thanger was handed over to Jammu Development Authority in the year 1973 by the Nazool Department pursuant to

Government Order No.Revenue(NDJ) 46 of 1973 after preparation of proper Map (Tateema Shajra) by the Nazool Department. It is averred that the

orders passed by the Divisional Commissioner, Jammu and the Financial Commissioner are in accordance with law after taking into consideration all

the relevant provisions. Further, it is averred that the land transferred to Mohd. Anwar and others by the Government in exchange of land, now

claimed by the petitioners is a different piece of land outside the boundary of land of Jammu Development Authority. However, it is averred that

attestation of Mutation No.246 in favour of Mohd. Anwar and others is a matter of record.

10. Objections have also been filed on behalf of State Government, through Commissioner/Secretary, Revenue Department averring therein that on

the basis of recommendations made by the Financial Commissioner, Revenue, the State Government vide order dated 24.06.1985 transferred land

measuring 19 kanals and 01 marla under Khasra No.256, situate at Village Thanger, Tehsil Jammu, in favour of Mohd Anwar and others in exchange

of land, and they were also put in possession of the said land simultaneously by the Tehsildar SettlementÂ in presence of staff of Jammu

Development Authority. It is averred that said Mohd. Anwar and others in turn sold 18 kanals and 01 marla land to one Rajan Gupta and others, and

they further sold the same to one Sushma Kapoor & others in the year 1990. Then the said land came to be sold to petitioners herein in the year 1993

by way of registered sale deeds. It is further averred that physical possession of said land has also been taken by the petitioners and mutations for 18

kanals and 01 marla land has also been attested in their favour. Further, it is averred that the Naib Tehsildar in his report dated 15.05.1997 has

clarified that the location of land-in-question was akin to Tatima Shajra drawn on Mutation No.246 and was corroborating with it. It is further averred

that the Settlement Tehsildar made on spot verification in presence of officials of JDA and made it clear in his report dated 28.08.1997 that the

Assistant Commissioner Nazool and Director Land Management, JDA in their separate verifications dated 23.07.1996 and 14.11.1996 have already

held it to be a private land falling in the ownership of Mohd. Anwar and others and no part of it was included in the land held by the Jammu

Development Authority. Further, it is averred that the JDA was given opportunity to produce any proof in support of their plea, but it failed to do so. It

is also averred that Mutation No.246 simply reflects the exchange sanctioned by the State Government and the same does not suffer from any legal

infirmity or illegality.

11. Heard learned counsel appearing for the parties, considered their rival contentions and perused the writ files.

12. Admittedly,Â land measuring 19 kanals and 01 marla comprised under Khasra Nos.763/m, 794/m, 776/m, 777/m, 795/m, 799/m and 800/m,

situated in Village Mokawal, Tehsil Jammu came to be allotted in favour of displaced persons, namely, Mohammad Ashraf (deceased), Mohammad

Anwar, Abdul Qayoom, Skindar Parvez, Mohammad Aslam and Shaukat Ali in exchange of their land vide Government Order No.197-Rev(LB) of

1985 dated 24.06.1985, issued by the Secretary to Government, Revenue Department in terms of Clause (a) of sub-section (1) of section 14-A of the

Jammu and Kashmir State

Evacuees? (Administration of Property) Act, Samvat, 2006, after it was recommended by the Financial Commissioner, J&K, vide Letter

No.FC(S)ST66/83 dated 06.04.1985. Out of the said land, land measuring 18 kanals and 01 marla ultimately came to be purchased by the petitioners

herein against valid Sale Deeds and Mutation Nos.599, 600, 601, 602, 603, 604, 605, 606, 609 and 610 also came to be attested in their favour in the

year 1993.

13. Now the Jammu Development Authority claims that Mutation No.246, originally attested in favour of Mohd. Anwar and others in the year 1985 in

respect of land-in-question measuring 19 kanals 01 marla under Khara No.256(min), had wrongly been attested in their favour on the ground that the

Nazool Department in the year 1973, pursuant to Government Order No.Revenue(NDJ) 46 of 1973, had handed over to Jammu Development

Authority the land measuring 101 kanals 18 marlas bearing Khasra No.256(min) at Village Thanger, which also included the land-in-question. In other

words, the stand of JDA is that the aforementioned land-in-question measuring 19 kanals and 01 marla also falls within the land handed over to JDA

by the Nazool Department. Thus, the JDA claims that since land measuring 101 kanals 18 marlas under Khasra No.256(min) had already been in its

possession since 1973, therefore, the land under the same khasra number allotted in favour of aforesaid Mohd. Anwar and others in the year 1985 by

the State Government is a different piece of land outside the boundary of land handed over to Jammu Development Authority by the Nazool

Department and not the one against which Mutation No.246 had been attested.

14. It is to be seen here that neither in the pleadings nor during the course of arguments the Jammu Development Authority ever raised any dispute

with regard to allotment of land measuring 19 kanals and 01 marla under Khasra No.256(min), situate at Village Thanger in favour of Mohd. Anwar

and others by the State Government in the year 1985 in exchange of their land nor disputed their right or the right of petitioners herein to hold the

possession of land, rather the stand of Jammu Development Authority is that the said land exists outside the boundary of land handed over to it by the

Nazool Department under Khasra No.256(min); meaning thereby the JDA has admitted that Mohd. Anwar and others had been allotted the land

measuring 19 kanals and 01 marla under the same Khasra number, i.e., 256(min) under which the JDA has also been handed over 101 kanals and 18

marlas land by the Nazool Department. It is relevant to mention here that Khasra No.256(min) is a big chunk of land consisting of 188 kanals and 17

marlas of land, Thus, the only dispute, as created by the JDA, is with regard to identification of land of petitioners herein.

15. Now the question arises for consideration is: whether the land-inquestion, originally allotted in favour of Mohd. Anwar and others by the State

Government vide order dated 24.06.1985, is the same land against which Mutation No.246 had been attested in their favour, which has now been

purchased by the petitioners herein, or, the land-in-question falls outside the boundary of land measuring 101 kanals and 18 marlas handed over to

Jammu Development Authority by the Nazool Department in the year 1973?

16. Admittedly, land-in-question came to be transferred/allotted in favour of Mohd. Anwar and others in exchange of their land in terms of Clause (a)

of subsection (1) of section 14-A of the Jammu and Kashmir State Evacuees?

(Administration of Property) Act, Samvat, 2006, relevant portion

whereof is reproduced hereunder:

14-A. (1) Where any evacuee or his heir is entitled to the restoration of any evacuee property on an application made by him in this behalf under

Section 14 or where the claim of any person is established under Section 8 and the Government or any Officer not below the rank of the Financial

Commissioner authorized by the Government in this behalf, is of the opinion that it is not expedient or practicable to restore the whole or any part of

such property to the applicant by reason of such property or a part thereof being in the occupation of a displaced person or otherwise, then,

notwithstanding anything contained in this Act, it shall be lawful for the Government

(a) to transfer to the applicant in lieu of the evacuee property or any part thereof, any immovable property belonging to the Government which is, as

nearly as may be, of the same value as the evacuee property, or any part thereof, as the case may be.

17. The said section specifically provides that where an evacuee or his heir is entitled to the restoration of any evacuee property and if the

Government or any officer not below the rank of Financial Commissioner is of the opinion that it is not expedient or practicable to restore the whole or

any part of evacuee property in the occupation of a displaced person, then in such a situation it shall be lawful for the Government to transfer to the

applicant/evacuee in lieu of the evacuee property or any part thereof, any immovable property belonging to the Government having same value.

18. The two main ingredients of this Section are: first, that when the Government or any officer not below the rank of Financial Commissioner is of the

opinion that it is not expedient or practicable to restore the whole or any part of such property in the occupation of a displaced person and, second, to

transfer the applicant in lieu of the evacuee property any immovable property belonging to the Government having same value.

19. Here in the present case, by the order of Government of J&K, the land-inquestion came to be transferred in favour of Mohd. Anwar and others in

exchange of their land vide order dated 24.06.1985 issued by the Secretary to Government, Revenue Department, under Clause (a) of sub-section (1)

of section 14-A of the Jammu and Kashmir State Evacuees' (Administration of

Property) Act, Samvat, 2006. It is to be seen here that the land-in-question belonged to the Government and it was transferred/allotted to Mohd. Anwar and others after it was recommended by the Financial

Commissioner vide Letter No.FC(S)ST-66/83 dated 06.04.1985; meaning thereby the transfer/allotment was effected after both the ingredients of the

section (supra) came to be satisfied. Thus, once order dated 24.06.1985 came to be issued by the Government after the recommendations of Financial

Commissioner, then how could the Financial Commissioner himself vide order dated 09.03.2012 in File No.153/FC/AP held order dated 24.06.1985 to

be illegal and Mutation No.246, attested in favour of Mohd. Anwar and others in terms of order dated 24.06.1985, to be nullity in the eyes of law.

20. Even, a copy of order dated 24.06.1985 had also been sent to Deputy Commissioner, Jammu with the request to hand over the possession of land-

inquestion to Mohd. Anwar and others and get necessary entries made in the revenue records. Accordingly, after the direction of Deputy

Commissioner, Jammu, Naib Tehsildar concerned visited the spot along with the revenue officials on 30.07.1985 and attested Mutation No.246 in

favour of Mohd. Anwar and others. Tatima Shajra of the State land, so transferred in exchange, had also been drawn on the mutation. Naib Tehsildar

had also reported in his Camp Report dated 30.07.1985 (Annexure â??Bâ? Page 48 of amended petition) that Mohd. Anwar and others had already

been put in possession of the land-inquestion. Therefore, Mutation No.246 attested in July 1985 simply reflects the exchange duly sanctioned by the

State Government vide No.197-Rev(LB) of 1985 dated 24.06.1985, thus, no illegality can be said to have attached to the mutation because the same

came to be attested only after the issuance of Government order (supra), whereby it was requested to Deputy Commissioner, Jammu on behalf of the

Government to get the necessary entries made in the revenue records in favour of Mohd. Anwar and others and handover the possession of land-in-

question in their favour.

21. However, against the said mutation, the Jammu Development Authority filed an appeal before the Settlement Officer with powers of Collector,

Jammu on 15.05.1998, i.e., after a lapse of more than 12 years of attestation of Mutation No.246 dated 30.07.1985. Even the Committee constituted

by the Divisional Commissioner, Jammu also reported that the JDA for the first

time agitated the matter before the revenue authorities in the year

1998, whereas mutation-inquestion came to be attested in July 1985.

22. The stand of JDA before the Settlement Officer was that the said mutation had wrongly been attested in favour of Mohd. Anwar and others as

the land-in-question already falls within the land handed over to JDA by the Nazool Department in the year 1973, whereas the land transferred in

favour of Mohd. Anwar and others is a different piece of land outside the boundary of land handed over to JDA by the Nazool Department. However,

the Settlement Officer dismissed the appeal vide order dated 07.05.2010; the JDA filed a revision petition before the Divisional Commissioner, Jammu,

who vide order dated 10.11.2011 set aside the order of Settlement Officer dated 07.05.2010 along with mutation No.246 and subsequent

mutations/entries in the revenue records, if any, and made a reference to the Financial Commissioner, J&K. The Financial Commissioner vide its order

dated 09.03.2012 also accepted the reference made by the learned Divisional Commissioner, Jammu, thereby holding the order dated 06.04.1985 to be

illegal and Mutation No.246 to be nullity in the eyes of law.

23. It is to be seen here that since the only dispute raised by the JDA was with regard to identification of land, accordingly, Vice Chairman, JDA vide

his communication of 1997 to the Joint Settlement Commissioner, Jammu sought demarcation of the land, who instructed the Tehsildar Settlement,

Jammu for the same. Tehsildar Settlement, Jammu in presence of concerned officials of JDA demarcated the land and submitted its report dated

28.08.1997, a perusal whereof reveals that the land-in-question does not fall within the land transferred to JDA and is a different land. Tehsildar

Settlement Jammu also prepared a site plan in respect of entire Khasra No.256. Even the Tehsildar Settlement in his report dated 28.08.1997 made it

more clear that the Assistant Commissioner Nazool and Director Land Management JDA in their separate verifications dated 23.07.1996 and

14.10.1996 have already held it to be a private land falling in the ownership of Mohd. Anwar and others. He further clarified that the Tatima Shajra

drawn on the mutation was correct and that the Nishandehi of the land already made by the Naib Tehsildar was depicting real position and correct

location of the land-in-question held by Mohd. Anwar and others on spot. But, still a further opportunity was given by him to the JDA to produce any

other proof, however, the JDA failed to do so. Thus, the demarcation report of the Tehsildar Settlement dated 28.08.1997 automatically attained

finality, once the JDA failed to produce any proof in respect of its claim.

24. Even, earlier also, when No objection was sought, nishandehi was carried out by the Naib Tehsildar, Nazool on spot in presence of revenue

officers of JDA and submitted the report on 06.07.1996, which was accepted by the revenue agency of the Nazool Department. Even the revenue

experts of JDA also carried out spot inspection and submitted the report on 12.10.1996 specifically mentioning that the land of petitioners is different

than the JDA land. The JDA Tehsildar also reported that the land-in-question is not JDA land (annexure C4 to the amended petition). Even the

Tehsildar Nazool has reported that the land-in-question is a private land. The JDA neither questioned these reports nor produced any material on

record to establish that the land-inquestion falls within 101 kanals and 18 marlas handed over to it by the Nazool Department.

25. Further, the Divisional Commissioner in his order dated 02.07.2011 passed in File No.24/revision, whereby he constituted a Commission headed by

Additional Deputy Commissioner, Jammu to demarcate the land comprising under Khasra No.256 (old), has specifically observed that despite

directions passed, the JDA failed to produce any revenue record which could establish that it is in physical possession of the land-in-dispute. He

further observed that the entry of 101 kanals 18 marlas of land has not been effected in the revenue records, without which no claim of JDA is

tenable. In fact no mutation has been attested in favour of JDA with respect to land measuring 101 kanals 18 marlas nor there was any entry of

Khasra Girdawari, in absence of which how it could be ascertained that land measuring 101 kanals 18 marlas has virtually ever been transferred by

the State or Nazool Department in favour of JDA. It would be appropriate to reproduce the relevant portion of order dated 02.07.2011 hereunder:

“From perusal of the above recorded position of the land comprising Khasra No.256 measuring 188 kanals 17 marlas, it has been observed that no

entry in the name of JDA has been reflected as such, but it is in the name of State land.”

26. It would also be appropriate to reproduce another part of said order hereunder:

â??The record produced by Nazool Department shows that a stretch of 101 Kls 18 Mls in Khasra No. was transferred to JDA in the year 1973 and

the JDA in turn recorded the said property in their departmental property register but the JDA did not ever bother to get the entries recorded in the

revenue record which itself speaks about the casual approach of the JDA staff. It was incumbent upon the JDA to get the entries recorded in the

records of Revenue Department well in time. As per the record, Nazool Department also did not bother to inform the revenue department about this

fact. There is not even a single marla of land available at present out of the land comprising said Khasra No.256.â??

27. The Divisional Commissioner further observed that in reply to a query, learned Counsel for JDA in the revision petition had specifically stated that

the JDA has not disputed the order dated 24.06.1985, whereby land-in-question came to be transferred in favour of Mohd. Anwar and others, nor

impugned the said order in the revision petition, rather the JDA has only questioned Mutation No.246 attested in favour of Mohd. Anwar & others.

The Divisional Commissioner also observed that a perusal of revenue record from the year 1969 up to the year 2011 reveals that no entry has been

found recorded in favour of Jammu Development Authority under Khasra No.256.

28. Further, once the Committee constituted by the order of Division Commissioner has clearly reported that it was unable to ascertain which part of

land in Khasra No.256(old) was actually given to Mohd. Anwar and others in lieu of their land in Village Makwal, then how could the JDA claims that

the land-in-question actually falls within their land measuring 101 kanals and 18 marlas, when entry in respect of JDA land was never recorded in the

revenue records since the year 1969 to 2011.

29. Once the JDA has not disputed order dated 24.06.1985, whereby land-inquestion came to be transferred in favour of Mohd. Anwar and others,

nor made the Government a party to the appeal filed before the Settlement Officer on 15.05.1998, then how could the JDA challenge Mutation

No.246, which was only the reflection of Government order dated 24.06.1985. Mutation No.246 was not attested at the request of Mohd. Anwar and

others, rather the same was attested in terms of Government order dated 24.06.1985, whereby the Deputy Commissioner, Jammu was requested to

get the necessary entries made in the revenue records and hand over the

possession of land-in-question in favour of Mohd. Anwar and others. Once the JDA has failed to challenge the basic Government order dated 24.06.1985, the JDA has no locus standi and is debarred from challenging Mutation

No.246. Even the JDA has failed to challenge the Sale Deeds which came to be executed in favour of persons who purchased the land-in-question

from time to time and lastly by the petitioners herein.

30. Further, Secretary to Government, Revenue Department had filed an affidavit before the Apex Court deposing that the land measuring 19 kanals

and 01 marla was given in exchange to Mohd. Anwar and others against their private land under Govt. Order No.197-Rev(LB) of 1985 dated

24.06.1985 and the said order has been given effect to by Mutation No.246 attested in favour of Mohd. Anwar and others on 30.07.1985 by the Naib

Tehsildar concerned. He further deposed that Mohd. Anwar and others were put in possession of the land simultaneously in presence of the Jammu

Development Authority staff and make it clear before the JDA staff that this was a separate piece of land and no part of it was included in the land

held by JDA. Even, Naib Tehsildar had also reported in his Camp Report dated 30.07.1985 (Annexure â??Bâ? Page 48 of amended petition) that

Mohd. Anwar and others had already been put in possession of the land-in-question. Thus, the Divisional Commissioner, Jammu seems to have

wrongly arrived at the conclusion that although revenue entries have been recorded in favour of Mohd. Anwar and others in respect of land-inquestion

on the basis of allotment order of the Government, yet they were not put in possession of the same. Once the Divisional Commissioner has himself

admitted that revenue entries came to be recorded in favour of Mohd. Anwar and others in respect of land-in-question on the basis of allotment order

dated 24.06.1985 issued by the Government of J&K, then how could he question Mutation No.246, attested in favour of Mohd. Anwar and others, that

too without questioning or challenging the basic allotment order of the Government.

31. It would also be appropriate to reproduce hereunder paragraph-6 of factual note of objections filed by the State Government on 09.08.2016:

â??That State land measuring 19 kanals and 01 Marla forming part of Kh. No.256 of Village Thanger, Tehsil Jammu was transferred in favour of

Mohd. Anwar and others by way of exchange sanctioned by the Government vide

Order No.97-Rev(LB) of 1985 dated 24.06.1985 and they were put in possession of the land simultaneously by Settlement Tehsildar in presence of the Jammu Development Authority staff and made it clear that this was a separate piece of land and no part of it was included in the land held by the Jammu Development Authority. So far as the mutation No.246 is concerned, it simply reflects the exchange sanctioned by the State Government and implementation of Government order No.197-Rev(LB) of 1985 dated 25.06.85 in the revenue records and does not suffer from any legal infirmity or illegality.â??

32. Further, in the subject matter of appeal filed by the JDA before the Settlement Officer on 15.05.1998 against Mutation No.246, the JDA has claimed that the land-in-question has been given to Mohd. Anwar and others against wrong and fictitious Tatima Shajra; meaning thereby the JDA has admitted drawing of Tatima Shajra when Mutation No.246 came to be attested in favour of Mohd. Anwar and others, although the JDA claimed the same to be wrong and fictitious. Once the JDA has admitted issuance of Government Order No.197-Rev(LB) of 1985 dated 24.06.1985 and did not question the same, then how could the JDA claim drawing of wrong and fictitious Tatima Shajra on Mutation No.246, that too when Mutation No.246 came to be attested and Tatima Shajra came to be drawn on it only after the direction of Deputy Commissioner, Jammu in terms of order dated 24.06.1985 (supra).

33. Also, I do not find any merit in the findings of Financial Commissioner, J&K that the mutation attesting officer was supposed to issue notice to the JDA before attestation of Mutation No.246, even if there was no entry in the revenue records in favour of JDA in respect of land measuring 101 kanals and 18 marlas transferred by the Nazool Department in its favour in the year 1973, because, as per Financial Commissioner, the revenue officers cannot pretend total ignorance of Order No.Revenue(NDJ) 46 of 1973 dated 28.01.1973, whereby the nazool land came to be transferred to Development authorities in and around Jammu and Srinagar cities.

34. Since there was no entry of JDA in the revenue records, therefore, mutation attesting officer was not supposed to summon JDA officials while attesting Mutation No.246 in favour of Mohd. Anwar and others in respect of land-in-question. Further, once the Government itself had issued Order

No.197Rev(LB) of 1985 dated 24.06.1985 after the recommendations of Financial Commissioner, J&K, transferring land-in-question in favour of

Mohd. Anwar and others in exchange of their private land, with a direction to Deputy Commissioner, Jammu to get necessary entries made in the

revenue records in their favour, there was no reason for the Deputy Commissioner and other revenue officers not to attest the mutation-in-question in favour of Mohd. Anwar and others. Therefore, Mutation No.246 cannot be said to be suffering from any legal infirmity. Otherwise too, the

Government was bound to give land in favour of Mohd. Anwar and others in exchange of their private land. Mohd. Anwar and others cannot be said

to be at fault because the land-inquestion came to be transferred in their favour in exchange of their private land, rather the dispute, if any, ought to

have been between the Government and the JDA, and for any laxity of JDA or the Government or Nazool Department, Mohd. Anwar and others and

now the petitioners herein cannot be made to suffer.

35. Further, once Order No.197-Rev(LB) of 1985 dated 24.06.1985 came to be issued by the Government only after the recommendations of

Financial Commissioner, J&K, then how after a lapse of more than 26 years, the Financial Commissioner vide order dated 09.03.2012 in File

No.153/FC/AP could term the said order to be illegal and held Mutation No.246, attested in favour of Mohd. Anwar and others in terms of order dated

24.06.1985, to be nullity in the eyes of law.

36. As regards the findings of Financial Commissioner that Mohd. Anwar and others ought to have been allotted agricultural land, instead of a land in

the shape of Ghair Mumkin Khud, which is totally unfit for cultivation, that too miles away from their native Village Makwal, it is to be seen here that

Section 14-A of the Jammu and Kashmir State Evacuees' (Administration of Property) Act, Samvat, 2006, clearly provides that the Government has

to transfer any immovable property belonging to it which is, as nearly as may be, of the same value as the evacuee property. Thus, the said section

nowhere provides that a displaced person has to transfer only agricultural land by the Government in exchange of agricultural land, rather it provides to

transfer any immovable property of the same value as the evacuee property. Further, the said section has not specifically provided that within which

distance the immovable property has to be transferred in exchange of the evacuee

property, rather it simply provides any immovable property belonging to the Government, as nearly as may be from the evacuee property. Thus, in terms of said section, it is for the Government to decide which land, as nearly as may be, belonging to it is to be transferred in favour of any displaced person. Virtually, the intent and object is to transfer any immovable property of the same value as the evacuee property in favour of any displaced person.

37. As regards the findings of Committee that the land-in-question, transferred to Mohd. Anwar and others, being belonging to agricultural class and all subsequent vendees belong to non-agricultural class and hence sanction from Deputy Commissioner was required for alienation in terms of Section 5(2) of the Alienation of Land Act, 1995, it is to be seen here that the land-inquestion has been recorded as a Ghair Mumkin Khad, which cannot be said to be agricultural land, thus the said section does not attract in the present case.

38. Further, once the JDA has not questioned order dated 24.06.1985 nor impugned the said order in the revision petition, rather the JDA has only questioned Mutation No.246 attested in favour of Mohd. Anwar & others, in such a situation the JDA is debarred from taking a plea that the State Government ought to have complied with the provisions of Section 18(4) of J&K Development Act before transferring the land in favour of Mohd.

Anwar and others.

39. Even, the Committee headed by Additional Deputy Commissioner, Jammu reported that there is no entry in the revenue records regarding the land measuring 101 kanals and 18 marlas handed over by the Nazool Department to the JDA. The said Committee reported that out of 188 kanals 17 marlas, land measuring 70 kanals 07 marlas has been recorded as Army Firing Range, 43 kanals recorded as Channi Himmat Housing Colony, 20 kanals 10 marlas recorded as National Highway (Bye Pass), 14 kanals 14 marlas in the name of Ravinder Sawhney, petitioner No.1 herein, 3 kanals 07 marlas in the name of Veena Sawhney, 01 kanal in the name of Mohd. Anwar and others, 33 kanals 11 marlas as Khana Kasht in the name of Mohd. Yaqoob and kaka son of Sain Dass, whereas 03 kanals 06 marla has been recorded as Malkiat-e-Sarkar. Thus, as per the report of Committee itself, out of total 188 kanals 17 marlas there is no land left in the name of JDA

under Khasra No.256, which claims 101 kanals and 18 marlas land handed over to it by the Nazool Department. When there is no vacant nazool land under Khasra No.256, therefore, on this ground too no question arises for issuance of notification under Section 18(4) of J&K Development Act.

40. The JDA made only Mohd. Anwar and others as well as petitioners herein as party respondents before the Settlement Officer; Divisional

Commissioner, Jammu and Financial Commissioner, who have been transferred only 19 kanals and 01 marla land by the State Government, whereas

for rest of its land, as claimed, the JDA has failed to make other occupants as party respondents before the Settlement Officer, Divisional

Commissioner, Jammu as well as Financial Commissioner.

41. As regards the transfer of nazool lands in favour of development authorities in the year 1973, it is to be seen here that vide Government Order No.

Revenue(NDJ) 46 of 1973 dated 28.01.1973 all vacant and lease free Nazool lands situate in and around the cities of Jammu and Kashmir were to be

transferred to the respective Development Authorities immediately. Thereafter, vide Order No.GR-125(NDJ) of 1986 dated 02.06.1986 again all

nazool lands situated in and around the cities of Srinagar and Jammu were to be transferred to the respective Development Authorities with immediate

effect along with Assistant Commissioner (Nazool), Jammu/Srinagar and their respective staff; meaning thereby order dated 28.01.1973 merged with

order dated 02.06.1986 because in both the orders the subject matter is transfer of Nazool lands to the respective development authorities without

specifying the lands. However, vide Government Order No.Rev(NDJ) 31 of 1988 dated 01.02.1988, the order dated 01.02.1988 came to be

withdrawn with the clarification that all these nazool lands shall again be managed by the Revenue Department through the Nazool Department which

will also function directly under the administrative control of Revenue Department; meaning thereby with the withdrawal of order dated 01.02.1988,

the order dated 28.01.1973 also came to be withdrawn. Because, in both the orders dated 28.01.1973 and 02.06.1986 it was only directed that all

nazool lands without description of specific Nazool lands. Therefore, on this ground too no question arises for issuance of notification under Section

18(4) of J&K Development Act.

42. Therefore, in view of what has been discussed above, I deem it proper to

allow the writ petition. Accordingly, the same is allowed and Order dated 10.11.2011 in File No.24/Revision of 2010 passed by the Divisional Commissioner, Jammu as well as order dated 09.03.2012 in File No.153/FC/AP of 2011 passed by the Financial Commissioner, Jammu, are hereby quashed. Petitioners herein are directed to submit fresh site plan before the JDA within a period of four weeks from today. On submission of said plan, JDA is directed to consider the same within a period of next four weeks without any further delay because the same is pending since the year 1996. Connected miscellaneous petition(s), accordingly, stands disposed of.