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**(2021) 10 J&K CK 0001**

**In the Jammu And Kashmir High Court**

**Case No :** Others Writ Petition (OWP) No. 1523 Of 2013, IA No. 01 Of 2013

Zahoor Ahmad Wani

APPELLANT

Vs

Union Territory Of J&K And Another

RESPONDENT

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**Date of Decision :** 01-10-2021

**Acts Referred:**

Constitution Of India, 1950 — Article 226, 278, 295  
Code Of Civil Procedure, 1908 — Section 9  
Land Revenue Act, 1996 — Section 11, 13, 15

**Citation :** (2021) 10 J&K CK 0001

**Hon'ble Judges :** Pankaj Mithal,CJ;Vinod Chatterji Koul, J

**Bench :** Division Bench

**Advocate :** M.Y. Bhat, R.A.Bhat, D.C.Raina, Sajad Ashraf, T. M. Shamsi

**Final Decision :** Dismissed

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## **Judgement**

Vinod Chatterji Koul, J

1. Quashment of Order dated 24th September 2013, passed by Defence Estates Officer, Kashmir Circle, is sought for by petitioner in this writ petition. He also seeks quashment of letters and orders dated 31st May 2013, 20th June 2013, 30th September 2011, and 9th September 2013, issued by Tehsildar, Defence Collector, Assistant Commissioner Budgam, and Special Collector, respectively. He also seeks a direction to respondents to derequisition of the land of petitioner measuring 46 Kanals 18 Marlas and hand over possession thereof to him with a further direction to respondents to release the arrears of rent in his faovur in terms of judgement dated 11th July 2011 passed in OWP no.167/2009. He also prays for a direction to respondents to implement judgement dated 23rd Ju7ly 2009 passed in LPA no.22/2004.

2. The case set up by petitioner in the instant writ petition is that in the year 1952, a big chunk of land was requisitioned for establishing Airport at Srinagar and the said action at that time was taken on the understanding and assurance that land owners will be paid rent compensation. It is contended that at that

point of time, the Government of India could not acquire the land in erstwhile State of J&K because of legal position then in force and thereafter J&K Requisition and Acquisition of Immovable Property Act, was enforced in the year 1968, but in the said Act, no time period of requisition of private property by the Government was prescribed. The Government took possession of a big chunk of land including the land measuring 46 Kanals 18 Marlas under Khasra Nos. 709, 710, 761, 751, 1544 and 566, situated at Karewa Damodar. In the revenue records, the said land was recorded under possession of Public Works Department when it is actually under the possession of Indian Army. The land owners of the said land filed a long-drawn litigation and sought return of possession of the land or in alternative acquisition of the same. The writ petition filed by said land owners titled as Zamindarani Committee Damodar Karewa Village vs. State and others, came to be allowed, against which LPA no.22/2004, which was decided on 23rd July 2009. The respondents were directed either to acquire the land or in alternative vacate the said land and hand over possession to land owners. It is stated that petitioner thereafter filed an individual petition and sought allotment of alternate land, but that individual writ petition, bearing OWP no.167/2009, came to be decided by the Writ Court, wherein the State Government pleaded that the said land was in possession of Army instead of PWD and the Writ Court determined in the said petition that the land was in possession of the Army and in terms of provisions of Requisition and Acquisition Act, the case of petitioner for grant of rent would be considered within a period of three months. When needful was not done, petitioner filed a fresh petition, bearing OWP no.565/2013. It is contended that Assistant Commissioner, Revenue, recommended petitioner's claim to Defence Estates Officer vide letter dated 27th January 2011, to which Defence Officer sought status of the land. It is stated that Defence Officer issued a consideration order dated 24th September 2013, rejecting petitioner's claim.

3. Reply affidavit has been filed by respondents 1&4. They contend that in the year 1952 Indian Army occupied big chunk of land all over the Kashmir Valley and thereafter most of land under occupation was regularized either by way of acquisition, requisitioning, hiring, etc. and the said process is going on. It is also stated that the land in question does not fall in Village Karewa Damodar, except land falling Khasra nos.1544 and 1566 and rest of the land comprising Khasra nos.709, 710, 751 & 761, situated in village Naroo, Tehsil and District Budgam. The status, nature and geographical location of these Khasra numbers and their recorded position does not confirm the claim of petitioner to be the absolute owner of land out of these Khasra numbers and that petitioner by adopting illegal means managed to mutate the said property in his favour in the year 2011 and is misguiding the Court by taking the dispute to 1952. It is also averred that land measuring 19 Kanals from Khasra no.751 stands acquired for the purpose of extension of runway of Srinagar Fir Field under DEO case no.KAS/7729/Acq for which J&K Home Department issued Form-J Notification under J&K RAIP Act, 1968, vide SRO no.290. In terms of mutation no.182 of 1954, land measuring

485 Kanals 02 Marlas has been entered in the name of Airdrome. Khasra nos.1077/709, 710, and 962/761, mentioned in the writ petition, are also mentioned in the Mutation no.182, and the possession of the land falling Khasra nos.1544 and 1566, has been shown in the revenue records as PWD in the tenancy column and kind of soil has been shown as Gair Mumkin Adda and there is a note mentioning that Khata no.1007 pertains to Sarkar land. It is maintained that land in question was initially acquired by the State PWD of the His Highness Lt Maharaja Hari Singh. It is also stated that as per para 5(b) of the Survey Board of the year 1954, the permanent buildings situated on the Srinagar Airfield which were previously being managed by the State PWD and which are now being maintained by the local M.E.S., have already been accepted by both these authorities as Ex-State Forces properties. The land pertaining to the said buildings was originally privately owned but was acquired by the State PWD in the year 1989 Samvat (1942 AD) for constructing Srinagar Airfield. It is also stated that after accession of J&K State with Union of India, the land under the possession of Maharaja was vested to Government of India, Ministry of Defence, in terms of Article 278 and 295 of the Constitution of India and an agreement dated 14th January 1956 was executed between the President of India and the State of J&K. Respondents maintain that as per entry in Military Land Register, an area measuring 6112 Kanals was transferred to Defence Department and the land being Ex-State Forces property with "situation of holding" mentioned as "Srinagar Air Field". It is submitted that judgement dated 23rd July 2009, passed in LPA no.2/2004, relates to the land measuring 3879 Kanals 12 Marlas, held on requisition by Army at Village Karewa Damodar, Kralpora and Wathoor and that petitioner is trying to mislead the Court by linking aforesaid judgement with the land mentioned in writ petition, which is under continuous possession of Air Force being Defence owned land. As regards filing of OWP no.167/2009, by petitioner, it is submitted by respondents that petitioner willfully not impleaded Union of India as party therein and managed to earn order dated 11th July 2011 from this Court for considering his claim for grant of rent of land mentioned therein and, therefore, the said order did not put any binding on respondents. It is also averred that OWP no.565/2013 was disposed of with a direction to respondents to consider the case of petitioner for release of arrears of rent in terms of judgement dated 11th July 2011 passed in OWP no.167/2009. In compliance thereof, respondents, after verifying the land records as well as reports of State Revenue authorities, passed consideration order dated 24th September 2013, in which petitioner's claim was rejected as it was observed that land for which petitioner is claiming compensation, is defence land which stands either acquired or transferred from the State of J&K to the Government of India, being Ex-State forces property. It is claimed that land in question is Defence land and it is duty of State Revenue Authorities to update its revenue records, change of ownership, mutations etc and, therefore, non-performance of duty by the State Revenue authorities regarding not mutating the land in the name of Government of India, Ministry of Defence, cannot be taken as fault of respondents and that Union of India is legal owner of landed property in question.

4. We have heard learned counsel for parties and considered the matter.

5. As is discernible from the pleadings, particularly in writ petition, it was way back in the year 1952, a big chunk of land was occupied by the Army for Srinagar Airfield. Respondents maintain and claim that Union of India is legal owner of land in question. Reference has been made to the Agreement entered into between the President of India and the erstwhile State of Jammu and Kashmir (Annexure VIII with writ petition). Perusal thereof reveals that a provision was made by Articles 278 and 295 of the Constitution of India as applied to Jammu and Kashmir by the Constitution (Application to Jammu and Kashmir) Order, 1954 for certain matters to be governed between the Government of India and the Government of Jammu and Kashmir. In terms of the aforesaid Agreement, it was, inter alia, provided that all properties and assets would vest in the Union, namely, all properties and assets pertaining to Jammu and Kashmir State Forces as they stood on the 1st September 1949; all properties and assets pertaining to the Telegraphs and Telephones Department of the State as they stood on 16th September 1953; all properties and assets pertaining to the portion of the Sialkot Jammu Railway falling within Jammu and Kashmir; and all properties and assets used for the purposes of air transport. It is also claimed and maintained by respondents that Union of India is legal owner of landed property in question and therefore, petitioner is not entitled to any rent. The facts made mention of by respondents 1&4 qua land in question and its ownership, in their Reply Affidavit, cannot be said to be incorrect as such factual aspects of the matter need to be adjudicated upon in civil proceedings and not in writ proceedings under Article 226 of the Constitution of India. The serious disputed questions of fact which require consideration of evidence, are not to be decided in a petition under Article 226.

6. Impugned order dated 24th September 2013, issued by Defence Estates Officer, mentions that land in question has been transferred from J&K State to Union of India, being Ex-State Forces property. All the details about the land acquired have been given by respondents 1&4 in the impugned order. Reference has been made to SRO 290 dated 15th June 1973; revenue records; agreement between the President of India and erstwhile State of J&K, which clearly tenders support to the case of respondents.

7. Insofar as Order dated 30th September 2011, passed by Assistant Commissioner, Budgam, setting-aside the mutation no.643 is concerned, the same is to be challenged under and in terms of provisions of the Land Revenue Act. Section 11 thereof provides an appeal to the Collector when the order is made by an Assistant Collector; an appeal to the Divisional Commissioner when the order is made by a Collector; and an appeal to the Financial Commissioner when the order is made by the Divisional Commissioner. Section 13 provides that a revenue officer may either of his own motion or on the application of any party, interested, review and on so reviewing modify, reverse or confirm any order passed by him or any of his predecessors in office. Section 15 of the Act provides

that Financial Commissioner may at any time call for the record of any case pending before or disposed of by any revenue officer under his control. Similarly, the Divisional Commissioner may call for the record of any case pending before or disposed of by any revenue officer subordinate to him. So petitioner could have availed of the remedy as is available in the Land Revenue Act.

8. It may be added here that consideration order dated 24th September 2013 has been passed taking into account order dated 30th September 2011, whereby mutation has been set-aside, so unless and until the order, cancelling mutation, is challenged in separate proceedings as available under the Land Revenue Act, the consideration order cannot be said to be illegal or passed in violation of principles of natural justice and resultantly the instant writ petition is not maintainable and is liable to be dismissed. Title/ownership vis-à-vis the land cannot be decided in a writ proceeding, more particularly when respondents have disputed ownership/title of petitioner qua land in question.

9. In D.L.F. Housing Construction (P) Ltd vs. Delhi Municipal Corpn. and others, (1976) 3 SCC 160, the Supreme Court has categorically laid down that where the basic facts are disputed and complicated questions of law and fact depending on evidence are involved, the writ court is not the proper forum to seek the relief and the right course for the High Court to follow is to dismiss the writ petition on preliminary ground without entering upon the merits of the case. The Supreme Court also observed that in absence of firm and adequate factual foundation, it is hazardous to embark upon the determination of the disputed factual points.

10. This Court, while rendering a judgement dated 18th August 2021, in Bashir Ahmad Fargodoo vs. State of J&K and others, which is similar to instant writ petition, has held that when writ petition involves dispute of title/ownership, the same is to be adjudicated upon in accordance with provisions of Section 9 of the Code of Civil Procedure by an appropriate civil court on the basis of the evidence of the parties and as a consequence of which writ petition is liable to be dismissed.

11. For the foregoing reasons, this writ petition is without any merit and is, accordingly, dismissed with connected CM(s). Interim direction, if any, shall stand vacated.