

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

Reserved on: 18.02.2026

Pronounced on: 04.03.2026

Uploaded on: 04.03.2026

*Whether operative part or
full judgment is
pronounced: **Full***

WP(C) No.202/2024

GHULAM MOHAMMAD RAH & ORS

...PETITIONER(S)

Through: - Mr. J. H. Reshi, Advocate.

Vs.

UT OF J&K & OTHERS

...RESPONDENT(S)

*Through: - Mr. Ilyas Laway, GA,
Mr. Faheem Shah, GA.*

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1) The petitioners, in the instant petition filed under Article 226 of the Constitution, have implored for the following reliefs:

- i. Writ of certiorari declaring the order No. 32/ACR/Acq/Ang dated 01.07. 2023 annexed to the writ petition as Annexure-IX passed by the respondent No. 8 i.e., Collector Land Acquisition/ACR Anantnag as null and void and setting aside the same in the interest of justice and fair play.
- ii. Writ of mandamus directing the respondent No.8 i.e., Collector Land Acquisition/ACR Anantnag to allow the petitioners to receive the amount of Rs. 289350 (Rs. Two Lac Eight Nine Thousand Three Hundred Fifty) lying with him and payable to the petitioners under the protest as provided under the

provisions of S.32 of the J&K Land Acquisition Act 1990 (A.D. 1934).

iii. Writ of mandamus commanding the respondent No.8 i.e., ACR Anantnag/ Collector Land Acquisition to make reference to the court of the Hon'ble Principal District Judge at Anantnag under S.18 of the J&K Land Acquisition Act 1990 (A.D.1934) for the determination of the compensation and other statutory benefits and interest payable to them under the law as sought by them in terms of their application dated for reference under S.18 dated 15.11.2023 annexed to the writ petition as Annexure-IX.

2) The facts, under the shade and cover of which the aforesaid reliefs have been prayed and as are stated in the petition, are that the petitioners owned land measuring 10 kanals 03 marlas falling under Khasra Nos.321/65, 67 and 68 situated at Nunwan, Pahalgam, which land came to be acquired by Pahalgam Development Authority (for short "the Authority") through Collector Land Acquisition/ACR, Anantnag, respondent 8 herein, and though an award came to be passed by the respondent 8 herein on 15.05.1982, yet the same was passed at the back of the petitioners without their knowledge and without any notice to them as was required to be issued under the provisions of the Land Acquisition Act, 1990 (1934 AD) (hereinafter referred to as "the Act of 1990") and that the moment the said award came into the notice of the petitioners and other land owners whose land was acquired, they approached the Deputy Commissioner, Anantnag, respondent 6 herein, for grant of

alternate land instead of monetary compensation as provided under Section 32 of the Act of 1990, in that, similar other landholders having been provided such alternate land.

It is further stated that though the case of the petitioners for providing them alternate land was processed and a suitable state land was identified by the respondents, yet the respondents did not take any final decision thereof compelling the petitioners to approach this Court through the medium of a writ petition being OWP No.632/2015, in response to which petition the respondents in the objections filed thereto pleaded that no suitable land is available with the Government at present which could be provided to the petitioners in exchange of their acquired land, as a consequence whereof, the Court disposed of the said writ petition vide judgement and order dated 04.10.2017 providing therein for payment of compensation payable to the land owners in terms of the final award passed by the Collector along with interest as payable under Section 35 of the Act of 1990 while also providing a liberty to the petitioners to avail the remedies as may be available to them under the provisions of the Act of 1990.

It is next stated that the aforesaid judgment and order dated 04.10.2017 along with an application came to be served upon the respondent 8 herein besides other respondents well in time, which, however, was not complied with compelling the petitioners to file a contempt petition being Contempt No.307/2018.

It is further stated that during the pendency of aforesaid contempt petition, J&K Reorganization Act, 2019, came into being, as a consequence whereof the Act of 1990 got repealed by the “Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” (for short ‘the Act of 2013’) and that since no land in exchange was provided to the petitioners and also that no reference under Section 18 of the Act of 1990 could be made by them on account of non-payment of compensation in terms of the award by the respondents, the petitioners herein also, in view of the coming into being of the J&K Reorganization Act, 2019, filed an application before this Court and withdrew the aforesaid contempt petition (CPOWP No.307/2018), which came to be allowed by this Court in terms of order dated 06.05.2022, whereafter the petitioners preferred another writ petition being WP(C) No.1450/2022 before this Court

for enforcement of their rights and claims under the Act of 2013 qua the land acquired by the respondents, which writ petition, however, came to be withdrawn by the petitioners in the light of passing of the judgment by the Apex Court holding that the acquisition proceedings initiated in the erstwhile State of Jammu and Kashmir prior to the coming into being of the J&K Reorganization Act, 2019, will continue to be governed by the Act of 1990.

It is also dated that upon withdrawal of said petition (WP(C) No.1450/2022), the petitioners got the contempt proceedings initiated earlier revived by maintaining contempt petition being CCP(S) No.510/2022 in OWP No.632/2015, which contempt proceedings eventually came to be concluded by the Court on 26.05.2023 on the basis of the stand taken by the respondents that the compensation and interest payable to the petitioners in terms of the judgment and order dated 04.10.2017 passed in OWP No.632/2015 has been deposited by the Collector with the Principal District Judge, Anantnag, and that the same has been disbursed in favour of the petitioners.

It is next stated that since the respondents had stated that the compensation payable to the petitioners had been deposited with the Principal District Judge, Anantnag, as

such, the petitioners filed an application before the Principal District Judge, Anantnag, on 10.06.2023 for release of the amount of compensation, however, the said application came to be returned back to the petitioners on 27.10.2013, on the ground that the amount of compensation has been returned back to the Collector, respondent 8 herein.

It is further stated that thereafter the petitioners submitted an application on 15.11.2023 before the respondent 8 herein for release of compensation as also for making of a reference provided under Section 18 of the Act of 1990, which application, however, was not decided by the respondents and instead the petitioners came to be informed through order dated 01.07.2023 by the respondent 8 that their earlier application for seeking reference stands decided.

3) **Reply** to the petition in the shape of para-wise reply has been filed by the respondents wherein it is being admitted that the land of the petitioners and other land holders was acquired after following due process of law and in furtherance thereof the petitioners were called upon to appear personally or through authorized agents for filing their objections, interest in the said land and the amount

and particulars of their claim to compensation and that the objections submitted thereof were duly considered and disposed of. It is further stated that the application referred in the petition claimed to have been submitted by the petitioners through their counsel on 27.10.2017 remained pending before the respondents only on account of pendency of the previous litigation between the petitioners and the respondents herein and that the said application dated 27.10.2017, a reference under Section 18 of the Act of 1990 had been sought and the said application came to be disposed of in terms of order dated 01.07.2023 and that the petitioners have been seeking reference under Section 18 qua the award passed on 15.05.1982 beyond the stipulated period provided under Section 18 of the Act of 1990 and, as such, the said application was rejected as being time barred and that since the petitioners failed to seek making of reference under Section 18 of the Act of 1990 within the stipulated period, the petitioners cannot now seek any relief from this Court in this regard and that in terms of judgment and order dated 04.10.2017 passed in OWP No.632/2015, the respondents were duty bound to release the compensation in favour of the petitioners as per the directions passed therein and that even thereafter the petitioners were called upon number of times to attend the

office, either personally or through authorized agents for receiving compensation and that despite having received notices by some of the petitioners, the petitioners did not attend the office of the respondents for receiving compensation.

Heard counsel for the parties and perused the record.

4) Before proceeding to advert to the case set up by the parties in their respective pleadings and also the rival submissions of the appearing counsel for the parties, it would be advantageous and appropriate to refer to Section 18 and 32 of the Act of 1990 hereunder being relevant herein;

18. Reference to Court.

(1) Any person interested who has not accepted the award may, by written application to the Collector require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made:-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

xxx xxx xxx xxx xxx

32. Payment of compensation or deposit of same in Court.

(1)On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested/entitled thereto, according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2)If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court, to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act to pay the same to the person lawfully entitled thereto.

(3)Notwithstanding anything in this section, the Collector may, with the sanction of the Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title or in such other way as may be equitable having regard to the interest of the parties concerned.

(4)Nothing in the last foregoing sub section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

5) Keeping in mind the aforesaid provisions of law and reverting back to the case in hand, it is not forthcoming from the record annexed by the respondents with the reply

filed to the petition, inasmuch as produced during the course of hearing of the case by the counsel for the respondents, that the petitioners came to be informed by the respondents about passing of the award dated 15.05.1982 or else suggesting that the petitioners were informed to receive the compensation qua their acquired land.

6) It is not in dispute as well that this Court, while disposing of OWP No.632/2015 supra on 04.10.2017, held that the prayer of the petitioners made for directing the Collector to provide them land in exchange cannot be granted in view of the specific stand taken by the respondents that there is no suitable land available for the purpose, yet the Court held that the petitioners cannot be deprived of the compensation payable to them in terms of award dated 15.05.1982, while observing that the Collector is under a statutory obligation to immediately and forthwith deposit the awarded amount the moment he passes the final award and to give a notice to the persons interested and entitled to the compensation under the award to collect the same. It also emanates from the said judgement and order dated 04.10.2017 that the court while finally disposing of the petition directed the Collector to release the

compensation awarded in favour of the petitioners in terms of award dated 15.05.1982 holding the petitioners also entitled to statutory interest provided under Section 35 of the Act of 1990 besides providing a liberty to the petitioners to avail the remedies as may be available to them under the provisions of the Act of 1990.

7) A closer examination of the available record would reveal that the petitioners, seemingly submitted an application before the respondent 8 herein on 27.10.2017 through the counsel subsequent to the passing of the judgment and order by the Court on 04.10.2017, making a request therein for payment of compensation for enabling them to receive the same **“under protest”** and to seek reference thereof to the civil court for determination of market value of the acquired land under Section 18 of the Act of 1990. The said application in essence has never been an application for seeking reference under Section 18.

8) Record also bears testimony to the fact that the respondents had taken a stand before this Court in the contempt petition being CCP(S) No.510/2022 having been filed by the petitioners qua disobedience of order dated 04.10.2017 that the amount of compensation stands forwarded to District Treasury, Anantnag, on 7th May, 2022

for depositing of the same in the bank account of Principal District Judge, Anantnag, for its onward disbursement to the petitioners and that the petitioners, in fact, have received the compensation, resulting into closing the proceedings therein the said contempt petition in terms of order dated 29.05.2022, thereby manifestly suggesting that till May, 2022, the amount of compensation had not been paid to the petitioners by the respondents even in terms of judgement and order dated 04.10.2017.

9) Perusal of the record also tends to show that the Principal District Judge, Anantnag, while dealing with the application filed by the petitioners herein on 10.06.2023 for release of the said compensation, disposed of the said application and consigned the same to records on the premise that the amount of compensation of Rs.289350/ having been credited in the account of the said Court on 02.08.2022 came to be ordered to be returned back to the Collector, Anantnag, in view of non-pendency of any reference proceedings, endorsing the plea of the petitioners that the amount of compensation was never paid to them by the respondents, despite demands made in this regard.

10) Further perusal of the record also reveals that the respondents claim to have served multiple notices upon the

petitioners, some of which are annexed with the para wise reply filed by the respondents are dated 27.12.2023, also authenticating the plea of the petitioners that they were never paid the amount of compensation by the respondents either after the passing of the award or else after the passing of judgment and order dated 04.10.2017. It is seemingly in this context, the petitioners had submitted an application before the respondent 8 herein on 15.11.2023 calling upon him to make a reference to Principal District Judge, Anantnag, which application is not disputed to have been received by the respondent 8 herein but is said to have been earlier considered and rejected earlier i.e. the application which had been filed on 27.10.2017 by the petitioner through their counsel and while risking repetition, the perusal of contents of which application do not suggest that the same was an application seeking reference under Section 18 of the Act of 1990, but was only an application made for making of payment of compensation to the petitioners in order to enable them to receive the same “**under protest**” for seeking making of a reference thereof.

11) It is significant to mention here that the provisions of Section 18 of the Act of 1990 has in law been held to be a

valuable right of the person whose land has been acquired and that in the process of deciding an application seeking reference to the civil court, the basic principles of natural justice are to be observed and the *sine qua non* for invoking the provisions of Section 18 read with Section 32 of the Act of 1990 envisage that the person interested must have notice of the award and also must have received the compensation **“under protest”** and that in order to dispute the right of reference of such interested person, it has to be established that the notice of the award was issued to the claimant and the claimant had the knowledge of the award and that the compensation was received by the claimant voluntarily or else **“under protest”**.

12) As has been observed in the preceding paras and also what emanates from the record, the chain of events reveal that the respondents did not actually pay compensation to the petitioners and the petitioners had not actually received the same be it voluntarily or **“under protest”** for enabling them to invoke the provisions of Section 18 read with Section 32 of the Act of 1990, and that the delay in maintaining an application for making reference under Section 18 read with Section 32 of the Act of 1990 by the petitioner has not been on the part of the petitioners and

that the respondents have not rejected the actual application filed by the petitioners for seeking reference under Section 18 of the Act of 1990, but instead an application dated 27.10.2017, whereunder the petitioners had sought release of compensation in their favour to receive the same **“under protest”** for enabling them to seek reference under Section 18 of the Act of 1990.

13) Therefore, having regard to the aforesaid position obtaining in the matter, it can safely be concluded that the impugned order dated 01.07.2023 is grossly misconceived and misplaced thus, requiring the respondents to treat the application filed by the petitioners on 15.11.2023 as an application under Section 18 of the Act of 1990 and accordingly make a reference thereof to the Principal District Judge, Anantnag.

14) Viewed thus, for what has been observed, considered and analyzed hereinabove, the instant petition succeeds, as a consequence whereof, impugned order dated 01.07.2023 is quashed and the respondent 8 herein is commanded to forward application dated 15.11.2023 forming Annexure-IX to the petition to Principal District Judge, Anantnag, as observed above.

15) Let the aforesaid exercise be undertaken and concluded within a period of six weeks from the date a copy of this judgment and order is served by the petitioners upon the respondents.

16) Record produced by the counsel for the respondents be returned back after retaining a copy of the same on the record of the instant file.

(Javed Iqbal Wani)
Judge

Srinagar

04.03.2026

“Bhat Altaf-Secretary”

*Whether the **Judgment** is speaking: **Yes***

*Whether the **judgment** is reportable: **Yes***

