

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No.554/2021

Reserved on 09.04.2026

Pronounced on:16.04.2026

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Pushpa Devi and others

.....Petitioner(s)

Through: Mr. R.K.S.Thakur, Advocate &
Ms. Nandita Thakur, Advocate

Vs

1. Union Territory of Jammu and Kashmir
through Commissioner-cum-Secretary to
Govt., Urban Development and Local Bodies,
Civil Sectt., Jammu.
2. Director, Local Bodies, Jammu
3. Municipal Committee through its President,
Katra
4. Executive Officer, Municipal Committee,
Katra

.....Respondent(s)

Through: Mr. Suneel Malhotra, GA with Mr. Divyanshu
Malhotra, Advocate

Coram: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1. The petitioners in the instant petition have invoked extraordinary writ jurisdiction of this Court, vested under Article 226 of the Constitution of India, to seek a writ of mandamus thereby directing the respondents to handover the possession of the land measuring 5 kanal 4 marlas comprising in Khasra No.436/268 (3 marlas), Khasra No.437/268 2 kanal 10 marlas), Khasra No.438/249 (11 marlas), Khasra No.439/269 (12 marlas), Khasra No.440/269 (1 kanal 6 marlas) and Khasra No.435/268 (12 marlas) situated at Katra (hereinafter to be referred to as "subject land") or in the alternate to acquire the said land under the provisions of Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 and pay compensation therefor.

Factual Matrix

2. It is stated that the petitioners have inherited the subject land from their predecessors-in-interest, who were the recorded owners in possession, which is so reflected in the revenue record including Jamabandi for the year 1997-98 svt. Vide SRO 112 dated 07.03.1963, Notified Area Committee, Katra was constituted and the landed property of the then village Katra fell within the boundaries of the Notified Area Committee, Katra.
3. For temporary use of parking of vehicles in Katra town the respondents required some land, a portion of the land including the subject land, was selected for the temporary parking of vehicles and with the permission of predecessors-in-interest of the petitioners, the respondents started using the subject land along with other land as parking space. According to the petitioners, the respondents were allowed to use the subject land temporary for parking of vehicles on the assurance that in case the same would be required permanently, the respondents would acquire the same in accordance with law and pay compensation for the same.
4. With the enactment of Municipal Act of 2000, J&K Municipal Act. Svt. 2008 and Notified Area Act Svt. 2011 have been repealed and the Notified Area Committee, Katra has been renamed as Municipal Committee, Katra.
5. It is stated that the respondents have acquired land measuring 464 kanals under different khasra numbers at village Kundrorian, outside the

municipal limits for construction of bus stand/parking place, which is almost complete, as such, the subject land would no longer be required by the respondents. It is stated that the petitioners have approached the concerned officers number of times for handing over the possession of the subject land to them or to acquire the same after payment of compensation, but till date neither the subject land has been vacated nor has it been acquired. It is further stated that the respondents had taken possession of the subject land without payment of any compensation and that they cannot be allowed to use the subject land for indefinite period.

4. On the contrary, the respondents have resisted the claim of the petitioners by filing their objections. It is stated that the subject land has been under continuous possession of the Municipal Committee, Katra since 1968-1969 till date without any hindrance and resistance from any quarter. It is further stated that there exists a public road, besides an auto stand also operates and is being run by the auto union from the subject land. According to the respondents, some portion of the land lying open and is being used as resting and recreational area for pilgrims visiting the region without any claim or protest by the petitioners and thus, the petitioners have no right to agitate or claim possession of the subject land merely on the basis of some revenue entries.

Submissions

5. Mr. Thakur, learned counsel appearing for the petitioners would argue that the petitioners, who are the owners of the subject land, cannot be deprived of their right to use and occupation over the subject land without following due process. He would further argue that despite repeated requests from the petitioners the respondents have neither handed over the

vacant possession of the subject land nor has acquired it in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is contended that no person can be deprived of his property save by authority of law. To buttress his arguments, learned counsel for the petitioners placed reliance on various judgments viz. *Vidya Devi v. State of Himachal Pradesh and others* (2020) 2 SCC 569, *The State of Haryana and another v. Amin Lal*, 2024 INSC 875, *Mushtaq Ahmad Jan and others v. Govt. of J&K and others*, 2025(3) JKJ[HC] 0 and *Sudhir Kumar and others v. Union Territory of J&K and others*, JKJ Online 87169.

6. On the other hand, only ground raised by the learned counsel appearing for the respondents to oppose the relief sought for by the petitioners is delay and laches. It is stated that the respondents are in interrupted possession of the subject land since 1968-1969, without any protest or objections from anybody, as such, the respondents had become owners by way of adverse possession. Reliance has been placed on *State of M.P. and others v. Nandlal Jaiswal and others*, AIR 1987 SC 251 to argue that there is inordinate delay in filing the writ petition, as such, same deserves to be dismissed.

Analysis

7. From the pleadings of the parties, it emerge that the petitioners are the owners of the subject land, having been stepped into the shoes of their ancestors, the ownership of the petitioners over the subject land has not been denied by the respondents, however, the respondents are opposing the relief sought for by the petitioners by stating that the claim of the petitioners is hit by delay and laches.

8. In the instant case, according to the petitioners the respondents were permitted by their ancestors to use the subject land temporarily and this fact has not been denied by respondents. It is also an admitted fact that the subject land has neither been acquired nor any compensation has been paid to the petitioners.
9. The right to property, while no longer a fundamental right, remains a constitutional right protected under Article 300A of the Constitution. This provision ensures that no person shall be deprived of their property save by authority of law. It reflects the principle that ownership, once legally established, cannot be arbitrarily interfered with by the State or any other authority. A person whose ownership is duly recorded in official records enjoys legal recognition and protection, and such ownership carries with it the assurance of security against unlawful dispossession. A legally recorded owner, therefore, cannot be divested of his property without adherence to due process of law.
10. Insofar as pleas of the respondents regarding adverse possession is concerned, same deserves to be rejected. Hon'ble Supreme Court in the case of **Vidya Devi** (supra), held that the State being a welfare state cannot be permitted to take the plea of adverse possession. Relevant paragraphs of the judgment are set out below:

*“10.5. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.*(2013) 1 SCC 353 wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.*

*This Court in *State of Haryana v. Mukesh Kumar* held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right.*

Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multifaceted dimension.

10.6. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to "adverse" possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.

11. From a reading of the aforequoted paragraphs of the judgment, it becomes crystal clear that the State being a welfare state cannot be permitted to take the plea of adverse possession, allows a trespasser to gain legal title over such property. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens.

12. In State of Haryana and another v. Amin Lal (supra), relying on Vidya Devi (supra), the Supreme Court held as under:

"Allowing the State to appropriate private property through adverse possession would undermine the constitutional rights of citizens and erode public trust in the government. Therefore, the appellants' plea of adverse possession is untenable in law."

13. In view of the clear dictum of law laid down by the Supreme Court, the plea of adverse possession raised by the learned counsel for the respondents falls flat, as such rejected.

14. Now remains the plea of the respondents with respect to delay and laches. In the case of **State of M.P. v. Nandlal Jaiswal (supra)**, on which reliance has been placed by the learned counsel for the respondents to raise the plea of delay and laches, the Supreme Court while dealing with a case where third party rights were created and in these circumstances, it was held that *"where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would*

decline to interfere, even if the State action complained of is unconstitutional or illegal". It was also observed that rule of delay and laches is not a rigid rule, to be applied in a straitjacket formula. Even if there has been a delay in approaching the court, it does not deprive the petitioners of their right to assert their claim over the land, which is undisputedly in the possession of the respondents.

15. In paragraph No.10.7 of Vidya Devi (supra), the Supreme Court has held thus:

"10.7. The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it."

16. In similar circumstances, a Division Bench of this Court while relying on Vidya Devi (supra), in **Mushtaq Ahmad Jan and others v. Govt. of J&K and others, JKJ Online 89245**, has rejected the plea of the state regarding delay and laches thereby directing the Government to forthwith initiate the process of acquisition in accordance with law.

Conclusion

17. Considering the case of the petitioners in view of the settled legal position, it can be said that the petitioners have been deprived of their

property without any legal sanction and without due process of law and the pleas raised by the respondents to oppose the claim of the petitioners are devoid of any merit.

18. In view of the above, writ petition is allowed, thereby directing the respondents to initiate process of acquisition of the land belonging to the petitioners, which is in their occupation forthwith and to conclude the process of acquisition and payment of compensation in terms of the law with respect to land acquisition, which is in vogue at present, within a period of six months from the date copy of this judgment is served upon them. In the event, the respondents do not intend to retain the subject land, they shall return the same to the petitioners.

Jammu
16.04.2026
Vinod, Secy

