

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

OWP No. 1068/2015

Reserved On: 2nd of June, 2026.
Pronounced On: 4th of June, 2026.
Uploaded On: 4th of June, 2026.

Whether the operative part or
full Judgment is pronounced: **Full.**

Peerzada Mohammad Syed, Age: 60 Years
S/O Peerzada Mohammad Yousuf
R/O Friends Enclave, Airport Road,
Budgam.

... **Petitioner(s)**

Through: -

Mr M. Ayoub Bhat, Advocate with
Ms Mahjabeen Bhat, Advocate.

V/s

1. **State (now UT) of Jammu & Kashmir,**
Through Commissioner/ Secretary to Govt.,
Revenue Department, Civil Secretariat,
Jammu/ Srinagar.
2. Divisional Commissioner,
Kashmir, Srinagar.
3. Managing Director,
J&K Cooperative Housing Corporation Ltd.,
Jammu/ Srinagar.
4. Deputy Commissioner,
(District Collector), Budgam.
5. Tehsildar, Budgam.

... **Respondents**

Through: -

Mr Ilyas Nazir Laway, Government Advocate.

CORAM: HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(JUDGMENT)

01. Through the medium of the present Petition, the Petitioner has sought a direction in the name of the Respondents, thereby commanding

them not to damage the present structures existing on spot in the land identified as “N-23” to the extent of 10 Marlas adjoining Plot No.N-21, as shown in the site plan, and further restraining the Respondents from illegally evicting him from the above said land, besides, a direction unto the Respondents directing them to consider his request for exchange of the plot of land as per the law and the norms and decide the application submitted by the Petitioner in this behalf.

02. The Petitioner claims to be an active political worker associated with the All-India Congress Committee, having remained President of the State Unit of the Youth Congress as also President of the State Unit of the All-India Congress Committee. The Petitioner is stated to have been representing the Assembly Constituency of Kokernag (Anantnag) in 1987, 2002 and 2008.

03. It is further stated by the Petitioner in his Petition that, given the political scenario of J&K, the Petitioner had, all along, faced the threat of militants and his life and property have been in constant threat of the militants, so much so, the Petitioner was attacked by the militants wherein he was seriously injured, besides his house at Kokernag was also attacked several times; that the J&K Housing Corporation Limited has been in possession of land as rightful owner, commonly known as “Friends Enclave Humhama”, and as per its policy coupled with the rules in vogue governing the subject, allotted plots to several persons, including the Petitioner herein, the main purpose whereof was to secure the smooth residence to the persons having threat to their life; that, in this behalf, Plot No.21 at Friends Enclave, Humhama was allotted to the Petitioner and a perpetual lease was executed in favour of the Petitioner to that effect; that the Petitioner has raised construction on the said plot for residential purposes.

04. It has been further asserted that since some 09-10 Marlas of land, approximately, adjoining the said plot, marked as “N-23” by the J&K Cooperative Housing Corporation Limited, was vacant and, in order to

secure his residence constructed over Plot No.21, the Petitioner had constructed a shed over the said land for security personnel, besides a lavatory block; that, thereafter, an application was submitted by the Petitioner to the J&K Cooperative Housing Corporation Limited for allotment of this portion of land adjoining Plot No.21 and, accordingly, vide No. JKGc/3/Humhama/2128-29 dated 20th of November, 2010, the said piece of land was also allotted to the Petitioner, in recognition of security concerns of the Petitioner.

05. The Petitioner pleads that, all of a sudden, on the instructions of Respondent No.2, the local revenue officials came on spot and damaged the surrounding wall of the above said adjoining land "N-23" and also damaged the shed constructed by the Petitioner; that, although, the said piece of land, i.e., "N-23", has been allotted to the Petitioner, even then the Petitioner had made a request to the Revenue Authorities concerned that the land above mentioned, i.e., "N-23" may kindly be given to the Petitioner in exchange of some suitable land to be provided by the Petitioner; that the said application of the Petitioner has not been decided by the Respondents despite lapse of considerable period of time; that the whole area on spot is a built up area and the aforementioned piece of land "N-23" is not fit for *Kahcharaie* purposes; that the Respondents have not provided any opportunity of hearing to the Petitioner before coming on spot and damaging the above said surrounding wall and shed, as such, the action of the Respondents, being illegal, is liable to be set at naught, besides the Respondents are required to be directed not to evict the Petitioner without adopting the due procedure prescribed by law.

06. Objections stand filed on behalf of Respondents No. 1, 2, 4 and 5, wherein it has been, *inter alia*, stated that the Petitioner has encroached upon 17 Marlas of *Kahcharaie* land by taking law into his own hands and has, without any authority of law, started raising construction upon it, as such, the Respondents have every authority to remove the encroachment

and to demolish the constructions raised by the Petitioner upon the *Kahcharaie* land; and that the Petitioner has no *locus* to stop the Respondents from acting as per the procedure prescribed under law and that the Petitioner cannot use the forum of this Court to stop the Respondents from proceeding in a lawful manner for removing the encroachment.

07. The Respondents, in their Objections, have further delineated that, prior to removing the encroachment of *Kahcharaie* land on spot, full details of the land allotted by J&K Cooperative Housing Corporation were sought from the said Corporation which were accordingly received vide No. JKCHC/12/F/E/H dated 4th of July, 2014, indicating therein that only 01 Kanal, 09 Marlas and 06 Sirsai were, in fact, allotted to the Petitioner; that, thereafter, demarcation was carried out on spot, wherein it got revealed that the Petitioner is in occupation of excess land measuring 17 Marlas from Survey No.1076/2 which is recorded as *Kahcharaie* land of Village Humhama; that the demarcation conducted on spot made it clear that the Petitioner has illegally occupied 17 Marlas of *Kahcharaie* land over which he has no right and the Respondents are duty bound to remove the encroachment on any *Kahcharaie* land; that, in compliance of Order No. DCB/SQ/292 dated 20th of December, 2014, issued by the Deputy Commissioner, Budgam, the illegal encroachment was removed by demolishing the shed and boundary wall; and that the Petitioner never ever applied for any exchange of land, as is prescribed under the provisions of the law/ rules governing the field, rather, a simple application was filed without informing about his proprietary land sought to be offered in *lieu* of the *Kahcharaie* land situate at Humhama, as such, no consideration was accorded to the same.

08. Heard learned Counsel for the parties, perused the pleadings on record and considered the matter.

09. Admittedly, the Petitioner was allotted Plot No.21 at Friends Enclave, Humhama, developed by Respondent No.3-J&K Co-Operative

Housing Corporation, under HIG Category measuring 7980 sft., for which a perpetual lease deed was also executed by and between the parties. It is also not in dispute that the Petitioner has raised construction on the aforesaid allotted plot for his residential purpose. However, the dispute appears to have arisen when the Respondents had gained the knowledge of the fact that the Petitioner has encroached upon 17 Marlas of *Kahcharaie* land, adjoining the plot allotted to him, by taking law into his own hands and has, without any authority of law, started raising construction upon it. Resultantly, the Respondents initiated proceedings against the Petitioner for removing the said encroachment upon the *Kahcharaie* land. In such a situation, the Petitioner is stated to have raised his claim before the Respondents over the said *Kahcharaie* land by making an offer of exchange of his proprietary land.

10. The Respondent-Housing Corporation had allotted the strip of land in question adjoining the Petitioner's Plot No. 21 vide communication dated 20th of November, 2010, however, the Petitioner knew that this strip of land was *Kahcharaie* land, as such, he applied to the District Collector, Budgam to allot him *Kahcharaie* land in exchange.

11. The application of the Petitioner submitted to the District Collector for exchange had been considered by him and, vide Order dated 27th of June, 2016, the same was found as without any ground, in view of the fact that the Petitioner had not proposed any specific proprietary land, in exchange and, therefore, the application was rejected.

12. A Committee of Revenue officials, headed by Tehsildar, Budgam, had been constituted by the District Magistrate, which found the land in question having been encroached upon by the Petitioner as *Kahcharaie* land.

13. The claim of exchange of proprietary land against *Kahcharaie* land rests on the provisions contained in Section 133(2) of the Land

Revenue Act, as was existing prior to its amendment vide S. O. 3808 (E) dated 26th of October, 2020. In terms of the said provision, before removing any encroachment on a *Kahcharaie* land, the occupier has to be given a notice in writing, thereby affording him an opportunity, *inter alia*, to offer an equivalent suitable area in exchange from out of his proprietary land. The said provision notified the Collector concerned as the competent authority to accept or reject any offer made for exchange of land. However, sub-section (2) of Section 133 of the Land Revenue Act, which was concerning the claims regarding offer of proprietary land in exchange of *Kahcharaie* land, has been substituted by an entirely new provision, which reads as under:

“(2) Prevention of encroachments on or cultivation of common land, or land reserved for public purposes or of which cultivation has been prohibited or is objectionable, or, by person, not entitled to, bring it under cultivation:

(a) Subject to any law, agreement, custom, usage or any decree or order of any Court or other authority, for the time being in force, every person shall exercise the right of user in respect of any road, street, lane, path, Water Channel, Water Course and Water Source and other common land defined as such in any law or declared as such by the Government or the Board;

(b) The right of user permitted by clause (a) shall not be deemed to include or otherwise confer, create or assign any right of encroachment, whether by means of construction, including fencing, walling or putting any barrier or by breaking up of land, diversion or otherwise.”

14. In view of the amendment of Section 133 (2) of the Land Revenue Act, as on date, there is no such provision to exchange *Kahcharaie* land against the proprietary land. This plea of the Petitioner to direct consideration of the exchange offer is, thus, not tenable now. The same, even in the year 2016, had been turned down by the District Collector, Budgam before the aforesaid amendment, for the reason that there was no specific offer for exchange.

15. From a plain reading of the aforesaid provision of law, it is manifestly clear that the exchange of proprietary land for encroached *Kahcharaie* land is not permissible now and the Deputy Commissioner concerned has no power to accept any such offer. That being so, in absence of any legal basis or statutory framework for considering the offer of the Petitioner, it would not be open to this Court to issue a 'Writ of Mandamus' against the Respondents to accept the offer of the Petitioner for exchange of his proprietary land against the *Kahcharaie* land.

16. The Petitioner is, thus, found to be in unauthorized possession of the land in question, which is *Kahcharaie* in nature, and the Respondents are at liberty to seek eviction or removal of the said encroachment from the land in question in accordance with law.

17. Viewed thus, the present Petition is **disposed** of as **partly allowed** to the extent by directing that the Petitioner shall not be evicted without following due course of law. Pending CM(s), if any, shall also stand **disposed** of, accordingly.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

June 4th, 2026

"TAHIR"

i. Whether the Judgment is approved for reporting? Yes.