Sr. No. 33

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on:- 23.11.2023
Pronounced on:- 14.12.2023

Case:- OWP No. 1885/2017
IA No. 01/2017

1. **S. Saroop Singh, Age 92 Years, S/o Lt. S. Bhag Singh, R/o Gadigarh, Jammu;**
2. **S. Maan Singh Age- 80 Years S/o Lt. S. Sant Singh R/o Gobind Pura,Jammu;**
3. **Prem Kour Age 75 Years D/o Lt. S. Jagat Singh R/o Karan Bagh, Gadigarh, Jammu;**
4. **S. Arshdeep Singh Age 35 Years S/o Lt. S. Isher Singh R/o H. No.75G-C Sainik Colony, Jammu;**
5. **S. Inderjeet Singh Age 75 Years S/o Lt. S. Ram Singh R/o Chatha Farm, Jammu;**
6. **S. Joga Singh Age- 66 Years S/o Lt. S. Pritam Singh R/o Chatha Farm, Jammu.**

For and on behalf of all the family members/descendents of 24 Displaced Persons (D.Ps) of 1947 to whom land measuring 224 Kanals and 10 Marias falling under Khasra Nos. 2, 3 and 6 of Village Chatha, Jammu was allotted.

..... Petitioner(s)

Through: Mr. Jagpaul Singh, Advocate.

Vs

1. **Union of India through Defence Secretary, Ministry of Defence Affairs, New Delhi;**
2. **Div. Commander 26 Division C/o 56 APO;**
3. **Station Commander, Deputy G.O.C. 26 Div. C/o 56 APO;**
4. **Defence Estate Officer, Jammu;**
5. **Deputy Commissioner, Jammu.**

..... Respondent(s)

Through: Mr. Sandeep Gupta, CGSC for R-1 to 4.
Ms. Monika Kohli, Sr. AAG for R-5.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

1. The instant petition has been preferred by the petitioners on behalf of all the family members/descendents of 24 displaced persons (DPs) of 1947 to whom the land measuring 224 Kanals and 10 Marlas falling under Khasra Nos. 2, 3 and 6 of Village Chatha, Jammu was allotted in the year 1953 by the State Government for their rehabilitation under Government Order No. 578-C of 1954 for vindication of their common rights for getting compensation for the aforementioned land from the respondent-Union of India, which according to the learned counsel appearing for the petitioners is illegally and unlawfully occupied by the respondent-Union of India.

2. The petitioners through the medium of instant petition have sought the following reliefs:-

> **"a. Mandamus commanding the respondent no. 5 to assess the compensation to be paid to the petitioners from 01-01-1978 till date by the respondent no. 1 to 4 for the forcible possession over the land measuring 224 Kanals and 10 Marlas of land falling under Khasra no. 2, 3 and 6 of Village Chatha, Jammu which was allotted to the DPs of 1947 in the year 1953 by the State Government for their rehabilitation under Government Order No. 578-C of 1954;**
>
> **b. Mandamus commanding the respondent no. 1 to 4 to pay the rental compensation to the petitioners as assessed by the respondent no. 5 for the forcible possession over the land measuring 224 Kanals and 10 Marlas of land falling Under Khasra no. 2, 3 and 6 of Village Chatha, Jammu which was allotted to the DPs of 1947 in the year 1953 by the State Government for their rehabilitation under Government Order No. 578-C of 1954;**

c. Mandamus commanding the respondent no. 1 to 4 to hand over the possession of the land measuring 224 Kanals and 10 Marlas of land falling under Khasra no. 2,3 and 6 of Village Chatha, Jammu which was allotted to the DPs of 1947 in the year 1953 by the State Government for their rehabilitation under Government Order No. 578-C of 1954 and was forcibly taken over by the respondent no. 1 to 4 or in alternative;

d. Mandamus commanding the respondent no. 1 to 4 to adopt the due procedure as laid down under J&K Land Acquisition Act for acquisition of land measuring 224 kanals and 10 marlas of land falling under Khasra no. 2, 3 and 6 of Village Chatha, Jammu which was allotted to the DPs of 1947 in the year 1953 by the State Government for their rehabilitation under Government Order No. 578-C of 1954, if they are in need of the same;

e. And any other order or direction which this Hon'ble Court deems fit and proper may kindly be issued in favour of the petitioners and against the respondents."

Arguments on behalf of the petitioners

3. Learned counsel appearing for the petitioners submits that the petitioners are displaced persons of 1947 from Tehsil Bagh Village Dhare, Pakistan Occupied Kashmir (PoK) and the erstwhile State of Jammu and Kashmir in its policy to rehabilitate the refugees of 1947, allotted a total area of 224 Kanals and 10 Marlas comprising Khasra Nos. 2, 3 & 6 in village Chatha, Jammu in the year 1953. The case of the petitioners is that the land in question was originally a private land, belonged to the private persons and after coming into force **the Big Landed Estates Abolition Act**, the same was escheated to the State of Jammu and Kashmir. The further case of the petitioners is that after the allotment of this land to the petitioners and their predecessors-in-interest, they remained in cultivating possession of the land. The learned counsel further submits that perusal of the revenue record indicates that the land allotted to the petitioners is in their occupation/cultivating possession ever since their allotment

and even prior to that. He also submits that the mutation in respect of the land, which is the subject matter of the instant petition also stands attested in favour of the petitioners in conformity with the terms and conditions, as laid down in Government Order No. 254-C of 1965. Learned counsel further submits that the instant petition is by way of second round of litigation, as the petitioners have preferred the writ petition earlier, which was registered as OWP No. 614/2001 and this Court vide judgment dated 28.08.2001 disposed of the same in the following manner:-

> **"The respondents would take notice of the observations so made and in case any of the petitioners has been dispossessed, then he shall be restored the possession and to pay compensation for the period he/they have remained out of possession. Let the order be passed within a period of three months from the date a copy of this order is made available by the petitioners to the respondents."**

4. The further case of the petitioners is that the respondents feeling aggrieved of the aforementioned judgment, preferred a Letters Patent Appeal bearing LPAOW No. 248/2001 before the Division Bench of this Court and the Division Bench of this Court has disposed of the said LPA in the following manner:-

> **"Counsel for the appellants has annexed a copy of agreement deed dated 14th January, 1956 to show that the land in question is vested with the Government of India by the aforesaid agreement. If that is so, the dispute raised by the writ petitioners by filing a writ petition is involved a disputed question of fact, which cannot be decided by a writ Court. To decide such disputed question of fact, evidence is necessary and this Court while sitting in a writ Court cannot decide a disputed question of fact. Therefore, filing of writ petition for resolving such dispute was clearly misplaced. Order dated 28.08.2001, passed by the learned Single Judge is, accordingly, set aside. Writ petition stands dismissed.**
>
> **We are, however, of the view that the writ petitioners should not be dispossessed without due process of law. It is also open to the parties to file a civil suit to establish the title over the land in question.**

With the aforesaid observations, this appeal is disposed of."

5. Learned counsel for the petitioners further submits that pursuant to the order passed by the Division Bench of this Court, the petitioners approached various revenue authorities which have held that the land measuring 224 Kanals 10 Marlas has been allotted to the Displaced Persons. Since, there was a finding recorded by the Division Bench of this Court that the issue in question falls in the realm of disputed questions of fact and with a view to clinch the controversy in question, a Committee was constituted under the Chairmanship of Divisional Commissioner, Jammu, which Committee held its meeting on 10.08.2010 with regard to the issue of release of rental compensation in respect of 224 Kanals of DPs land in village Chatha under occupation/use of army authorities w.e.f. 1978.

6. Mr. Jagpaul Singh, learned counsel for the petitioners has drawn the attention of this Court to the said meeting, which has been held under the chairmanship of the Divisional Commissioner, Jammu, in which it has been held that the land measuring 224 Kanals of State land falling under Khasra Nos. 2, 3 and 6 of Village Chatha, Jammu was allotted to DPs of 1947 in the year 1953 by the State Government for their rehabilitation under Government Order No. 578-C of 1954, which land was brought under the cultivation of the petitioners soon after allotment and pursuant thereto, proprietary rights were conferred in their favour on the strength of the mutations attested by the State Government in conformity with Government Order No. 254-C of 1965.

7. Learned counsel for the petitioners further submits that as long as the mutations, which have been attested in favour of the petitioners are intact and have not been called in question, it does not lie in the mouth of the Union of

India to agitate that the land belonged to them in absence of any specific challenge to the mutations and findings recorded by the aforesaid Committee constituted in this regard. Consequently, the action of the respondent-Union of India is illegal and is liable to be set aside as per the learned counsel.

8. Learned counsel submits that the stand of the petitioners stood vindicated by the findings recorded by the said Committee qua the land in question and, thus, according to the findings recorded in the said minutes of meeting, the petitioners have a vested right of receiving compensation for the land, which has been forcibly occupied by the Government of India since 1978.

9. It is further submitted that the Divisional Commissioner, Jammu vide his Communication dated 14.07.2011 had requested the Director (L&C), Government of India, Ministry of Defence to release the rental compensation, as assessed by the J&K State Government in favour of the petitioners. From the bare perusal of the said communication, it is apparent that the land falling under Khasra Nos. 2, 3 and 6 of Village Chatha, Jammu was allotted by the State Government to the DPs of 1947 in the year 1953 , i.e., well before execution of the agreement, on which reliance is placed by the Government of India, wherein it has been mentioned that the land in question had been under the occupation of the State Government/allottee and the allotment orders of the mutations attested in favour of the DPs of 1947 have not been challenged by the defence authorities before the competent forum for such cancellation, which have attained finality over the years.

10. It is stated that the occupancy tenancy rights under Section 3-A of Agrarian Reforms Act, 1976 have also been vested in them and in the aforesaid backdrop, a request was made to Director (L&C), Government of India,

Ministry of Defence by the Assistant Commissioner (Central) on behalf of Divisional Commissioner, Jammu to release the rental compensation, assessed by the J&K State Government on top priority. The record reveals that another meeting was held on 03.04.2012 under the Chairmanship of Divisional Commissioner, Jammu and in the minutes of meeting, it was held that the petitioners are entitled to rental compensation w.e.f. 01.01.1978 and, accordingly, Deputy Commissioner, Jammu has assessed the compensation to the tune of Rs. 2.49 Crore for the period 01.01.1978 to 31.03.2009.

11. With a view to fortify his claim, learned counsel for the petitioners has placed on record the copy of the minutes of meeting dated 03.04.2012 and also the statement of rental compensation calculated by the revenue authorities.

12. Pursuant thereto, vide Government Order No. 793-GAD of 2013 dated 23.05.2013, sanction was accorded to the constitution of another Committee to examine the records of the agreement dated 14.01.1956 between the President of India and the Government of Jammu and Kashmir regarding assets of Jammu and Kashmir Ex-State Forces in the light of the consistent stand taken by the Government of India, which was opposing payment of rent to the petitioners. It is submitted that the said Committee on verification, has found that the land in question, which was allotted to the DPs of 1947 in the year 1953 by the State Government for their rehabilitation is in conformity with the Government Order No. 578-C of 1954 and the said Committee has further held that a genuine case has been made out by the petitioners for getting possession of their land from the Army in addition to the grant of rental compensation from 1978 onwards.

13. It is submitted that insofar as the objection raised by the Union of India with respect to Firing Range is concerned, the Committee has specifically observed that the Deputy Commissioner has already made it clear that the army could shift their Firing Range from the said area to the newly raised Firing Range at Sunjwan or to some other alternative site. The Committee has further resolved that in case the Union of India still requires whole of the land or any part thereof for the defence purposes, they can be advised to seek its formal requisition under the relevant Act on payment of regular compensation to the interested persons (petitioners herein) at the prescribed rates.

14. Learned counsel has also placed on record the extracts of discussion held on 28.04.1956 and 29.04.1956 with the then Prime Minister, which makes it amply clear that the land was allotted to the displaced persons. Further, learned counsel submits that since the right to property earlier was a fundamental right and now a constitutional right provided under Section 300-A of the Constitution of India and the petitioners cannot be deprived of their right to have property without following due process of law and, thus, action on the part of the respondent-Union of India in not paying the rental compensation to the petitioners is illegal and violative of their constitutional rights. Therefore, it cannot sustain the test of law and is liable to be set aside.

15. Lastly, learned counsel appearing for the petitioners has drawn the attention of this Court to the order passed by this Court dated 09.05.2023, when last and final opportunity of four weeks was granted to Mrs. Kohli, learned Sr. AAG for filing counter, failing which it was observed that the right to file the same shall closed. He further submits that since no reply was filed by the

learned Sr. AAG, the right to file the counter on behalf of the respondent No. 5 stood closed by this Court.

Stand of Respondent No. 5

16. Mrs. Monika Kohli, learned Sr. AAG appearing on behalf of respondent No. 5 although has not filed any reply, yet has been given an opportunity to address the arguments. She submits that the detailed inquiries have been conducted in this regard under the Chairmanship of the Divisional Commissioner, Jammu, which vindicates the stand of the petitioner and in the light of the findings recorded by the Divisional Commissioner, Jammu in the aforesaid Committees, she adopts the finding recorded in the aforesaid inquiries as a part of reply to the writ petition.

17. Learned counsel for the respondent No. 5 has referred to the reports of the two Committees dated 10.08.2010 and 03.04.2012 headed by the Divisional Commissioner, Jammu and the findings have been recorded by the aforesaid Committees, which vindicate the stand of the petitioners. She has also referred to the Committee constituted for the non-release of rent in respect of the land in question in favour of the petitioners headed by the Chief Secretary and also to examine the records of the agreement dated 14.01.1956 between the President of India and the Government of Jammu and Kashmir regarding assets of Jammu and Kashmir Ex-State Forces. She further submits that another General Committee has been constituted which doesn't pertain to the case of the petitioners for examining all the connected matters as incidental to the defence land in the Union Territory of Jammu and Kashmir with the change of circumstances after re-organization vide Government order No. 322 JK(GAD) of 22 dated 25.03.2022 by the Principal Secretary to Government in the General

Administration Department comprising of Financial Commissioner (Revenue), Divisional Commissioner, Kashmir, Divisional Commissioner, Jammu and the Committee is headed by the Financial Commissioner (Revenue), who happens to be the Chairman of the said Committee. The copy of the said Government order has been taken on record. She also submits that another Communication No. DCJ/LHS/Army/BC-695/2923 dated 02.07.2022 has been issued by the Deputy Commissioner, Jammu to Divisional Commissioner, Jammu with respect to the rent reliefs' case of the petitioners which has also been taken on record.

Stand of Union of India

18. ***Per contra***, reply stands filed on behalf of Union of India, in which a specific stand has been taken by the respondent Nos. 1 to 4 that as per the agreement dated 14.01.1956 executed between the then President of India and the State of Jammu and Kashmir, all Ex-State Forces Properties, as it stood on 01.09.1949 shall be vested in the Union of India. In the aforesaid backdrop, a Survey Board of Officers was convened for identification of such properties in the Jammu and Kashmir State and in the said Board of Officers, besides the concerned Army Officers, the Deputy Commissioner, Jammu, the Divisional Engineer, B&R PWD Jammu, the Military Estates Officers, Jammu, the Assistant Garrison Engineer, the Cantonment Executive Officers, Jammu and the Superintendent In-charge, LH&D Service participated in the proceedings. In support of his arguments, learned counsel for respondent Nos. 1 to 4-Union of India has placed reliance on the judgments of Hon'ble Apex Court in case titled "**Bhimabai Mahadeo Kambekar (D) Th. Lr. Vs Arthur Import and Export**

Company & Ors, reported in 2019 (3) SCC 191" and in case titled **"P Kishore Kumar vs Vittal K Patkar in Civil Appeal No. 7210 of 2011"**.

19. As per the stand of the respondent Nos. 1 to 4, all the Ex-State Forces Properties were identified by the Board of Officers vide its proceedings dated 15.06.1956 in Village Chatha, Narwal Pain, Satwari, Raipura and Rakh Raipur and a total area of 13827 Kanals and 17 Marlas was identified as Ex-State Forces Land in the above said villages, out of which 6263 Kanals and 09 Marlas has already been mutated in favour of Union of India by the State Revenue Department and insofar as the land falling under Khasra Nos. 2, 3 & 6 situate at Village Chatha Satwari, Jammu is concerned, it is also a part of the land measuring 788 Kanals transferred to Union of India. Thus, in the aforesaid backdrop, as per the stand of the respondents, the petitioners are neither entitled for payment of rent nor the land is required to be acquired. According to the respondent-Union of India, this land has already been vested with the Union of India as per the agreement mentioned (supra). It is submitted that the entire land is under the occupation of Army for Firing Range as per Occupation Certificate issued by the Station Headquarter, Jammu and the State Government through revenue agencies, has made illegal allotment to displaced persons, who claim the ownership rights over the land on the strength of these illegal allotments and have sought payment of rent for the land in question, which is under the occupation of Army for Field Firing Range.

20. It is contended that the land in question was initially recorded in the civil revenue records as the State land under occupation of **'Mahakama Jangi (Army)**' at the time of its transfer to Government of India way back in the year 1956, which is verified from Jamabandi for the years 1955-56. However, the

mutation in favour of the Government of India for the land in question was not carried out by the State Government and the matter was, accordingly, taken up with the State Government by the Defence Estates Authorities and finally, the Government of Jammu and Kashmir through its revenue department issued Government Order No. Rev/LAB/143 of 1992 dated 09.12.1992 for mutation of the property in favour of Ministry of Defence (MoD).

21. It is further submitted that the land which has not been mutated and where there is no fence and has been recorded as **'State Maqbooz State',** which is in illegal possession of few individuals and subsequently, allotted/mutated in their name was in gross violation of the decision mentioned (supra). As per respondents, even the land which has not been legally allotted to DPs, has been subsequently entered in their name by changing the entries of **'Maqbooza Mehkma Dafa'** in favour of the private beneficiaries. The further stand of the respondents is that the defence land in Jammu cantonment area is governed by Cantonment Land Administration Rules, 1937 (in short, '**CLA Rules**') and as per Rule 3 of CLA Rules, no addition or alteration in the general land register can be made except with the provisions of Central Government or such authority, as the Central Government may appoint.

22. The further stand of the respondents is that since the land in question has been transferred to the Government of India on the strength of an agreement executed way back on 14.01.1956 and any kind of mutation, if carried out by any revenue authorities or decision given by them without consulting Union of India is illegal and cannot sustain in the eyes of law and any action, which has been taken by the State Government subsequently, is in flagrant violation of the agreement, which was executed way back in the year 14.01.1956 between the

President of India and the Government of Jammu and Kashmir and, as such, the petitioners have no right whatsoever under law to have compensation over the land, which belongs to the respondent Nos. 1 to 4 and the findings recorded by the Committees headed by the Divisional Commissioners have no bearing in the instant petition and, thus, the writ petition is devoid of any merit and deserves dismissal.

Legal Analysis:-

23. Heard learned counsel for the parties at length and perused the record which reveals that the matter was admitted way back on 01.06.2018 when time was granted to the respondents to file counter, which was filed only on behalf of respondent Nos. 1 to 4. Pursuant thereto, four weeks' time was granted to respondent No.5 vide order dated 22.08.2019 and same was not filed. However, counsel for the respondents was granted further time to file counter affidavit positively vide order dated 24.09.2021 and subsequently, further time was granted by way of last and final opportunity as reflected in order dated 25.02.2022. In spite of availing last and final opportunity, the counter affidavit was not filed by respondent No.5, the Court granted another last opportunity for filing counter failing which it was observed that the right to file the same shall stand closed. Even the respondent No.5 failed to produce the record in terms of the orders passed by this Court and this how the right to file counter affidavit on behalf of respondent No.5 stood closed. However, this Court in the interest of justice granted opportunity to the learned counsel appearing on behalf of respondent No.5 to assist the Court with a view to do substantial justice.

24. A bare perusal of the record reveals that the land measuring 224 Kanals 10 Marlas of state land falling under Khasra nos. 2, 3 and 6 of Village

Chatha, Jammu was allotted to the DPs of 1947 in the year 1953 by the State Government for their rehabilitation under Government Order No. 578-C of 1954 and the said land was brought under cultivation by them soon after allotment and proprietary rights were also conferred upon them by virtue of mutations attested in their favour by the State Government under Government Order No. 254-C of 1965 and none of the mutation was ever challenged by the defence authorities. The record further reveals that DPs were the legal/rightful owners of their land, which was later unauthorisedly/forcibly occupied by the defence forces in 1978.

25. Thus, it is an admitted fact that once a land is allotted to the DPs for their rehabilitation under G.O. 578-C of 1954, the same cannot be taken away from them by any means or by any of the agency without payment of rentals (through requisition) or by payment of compensation (through acquisition) after adopting due course of law.

26. The record further reveals that the Divisional Commissioner, Jammu vide its communication dated 14.07. 2011 requested the Director (L&G) Government of India Ministry of Defence to release the compensation as assessed by the J&K State Government in favour of the petitioners and accordingly a meeting was held on 3.04.2012 under the Chairmanship of Divisional Commissioner, Jammu whereby rental compensation w.e.f 01.01.1978 to the tune of Rs 2.49 crore for the period 01.01.1978 to 31.03.2009 was assessed in favour of the petitioners.

27. Record further reveals that even a fresh Committee was constituted vide Government Order No. 793-GAD of 2013 dated 23.05.2013, headed by the Chief Secretary to examine the consistent objections taken by the Union of India

that the land is vested in the Union of India in light of the agreement dated 14.01.1956 between the President of India and the Government of Jammu and Kashmir. The aforesaid order is reproduced as under, for facility of reference:-

Government of Jammu and Kashmir
General Administration Department
(Administration Section)
Civil Secretariat, Srinagar

Subject:- Non-release of rent in respect of 224 kanals of land occupied by the Army in Village Chatha, District Jammu, since 1978-Constitution of Committee, thereof.
Reference: UO No. Home/CL-6/2009/2010/Meeting, dated 22.04.2013 received from Home Department.

Government Order No. 793-GAD of 2013
Dated: 23.05.2013

Sanction is hereby accorded to the constitution of a Committee comprising the following to examine the records of the agreement dated 14.01.1956 between the President of India and the Government of Jammu and Kashmir, regarding assets of Jammu and Kashmir Ex-State Forces:

i)	**Chief Secretary**	**Chairman**
ii)	**Divisional Commissioner, Kashmir**	**Member**
iii)	**Divisional Commissioner, Jammu**	**Member**
iv)	**Secretary to Government, Revenue Department**	**Member**
v)	**Principal Director Defence Estates, Jammu and Kashmir**	**Member**

The Committee shall submit its report within a period of 15 days.
By order of the Government of Jammu and Kashmir.

Sd/-
(Sheikh Mushtaq Ahmed)IAS,
Secretary to Government
General Administration Department

28. The said Committee has gone in detail and scrutinized the records and upon verification has conclusively held that the land in question, which was allotted to the DPs of 1947 in the year 1953 by the State Government for their rehabilitation under Government Order No. 578-C of 1954 and the said Committee has further held that a genuine case has been made out by the petitioners for getting possession of their land from the Army in addition to the grant of rental compensation from 1978 onwards. The finding so recorded by the

said Committee headed by the Divisional Commissioner has assumed finality and has been gladly and voluntarily accepted by the Union of India as no challenge has been thrown to the findings recorded by the said Committee. The Committee has recorded the finding after hearing all the interested parties including the Union of India which vindicates the stand of the petitioners that they have an unfettered right of getting the possession of their land from the Army in addition to the grant of rental compensation from 1978 onwards.

29. The finding recorded in its meeting held on 03.04.2012 by the enquiry Committee under the Chairmanship of Divisional Commissioner, Jammu after hearing Union of India, has observed that a genuine case for getting possession of the land from Army has been made out in addition to grant of rental compensation from 1978 onwards in favour of the petitioners.

30. It would be apt to reproduce the relevant extract of minutes of the meeting held on 10.08.2010 under the Chairmanship of Divisional Commissioner, Jammu with regard to release of rental compensation of the land in question:

> ***"After discussing and deliberating upon the issue and perusing the revenue records available, the following facts emerged:***
>
> ***(a) That 233 Kanals of State land falling under Khasra numbers 2, 3 and 6 of Village Chatha Jammu and allotted to the DPs of 1947 in the year 1953 by the State Govt. for their rehabilitation under Government Order No. 578-C of 1954. The said land was brought under cultivation by them soon after allotment and some structures were also raised thereupon. Subsequently, proprietary rights were also conferred upon them by virtue of mutations attested in their favour by the State Government under Government Order No. 254-C of 1965. The said attested mutations are intact and valid till date. None of the mutation was ever challenged by the Defence authorities. Thus, the DPs are the legal/rightful owners of their land, which has later been unauthorizedly/forcibly occupied by the Defence***

forces in 1978, part of which they have been using as small arms firing range.

(b) That it is an admitted fact that once a land is allotted to the DPs for their rehabilitation under G.O 578-C of 1954, the same cannot be taken away from them by any means or by any of the agency without payment of rentals (through requisition) or by payment of compensation (through acquisition) after adopting due course of law as envisaged in Evacuee Property Act 2006 as amended till date. Thus, this land legally and rightfully belongs to the DPs and as it has been continuously under the use of the Defence Forces till date, the latter are liable to pay rentals to the owners for the period it has remained under their use. Thus, the rent assessed by the Deputy Commissioner is a past liability on the Defence authorities which cannot be denied at this stage.

(c) Even the contents of the agreement executed on 14th Jan. 1954 between the DPs and Defence authorities reveals that it was clearly mentioned in the said agreement the land in question had been allotted to the displaced persons in the 1953 prior to the date of execution of agreement i.e 14th January, 1956 and the army authorities cannot deny that this fact has been known to them since the signing of the said agreement.

(d) In view of the above, Divisional Commissioner, Jammu said that there was no reason why the Defence Authorities refuse/decline to pay the rentals to the rightful owners of the said land as assessed by the Collector i.e Deputy Commissioner Jammu. He asked the Defence Estates Officer, Jammu Circle to apprise his superiors about the factual position of the case and release funds to the Deputy Commissioner, Jammu for clearing the pending liability. If the Defence authorities wish to continue to use of the said property, they should requisition it forthwith otherwise they shall vacate it so that it could be restored to the DPs under law.

(e) The Defence Estates Officer said that it would help if the Divisional Commissioner would also take up the issue with the Principal Defence Estates Officers at his level. The Divisional Commissioner said that he too would write to the Principal Defence Estates Officer for settling the issue at the earliest, after making payment of rent to the tune of Rs.2.49 crore to the Displaced Persons of 1947 as has been assessed by the Deputy Commissioner, Jammu and that a copy of the same shall also be sent to Secretary to Government, Ministry of Defence and the FC (Home) J&K Srinagar to apprise them about the case."

31. Pursuant thereto, another meeting was held on 03.04.2012 under the Chairmanship of Divisional Commissioner, Jammu to sort out the issue of payment of rentals to 24 DP families of 1947 (petitioners herein) for their allotted land under occupation of Army since 1978. The relevant extract thereof is as under:

> ***"7) Thus this land of 24 DP families belongs to them legally and rightfully and has been forcibly occupied by the army in the year 1978 and is continuously under their use since then. Therefore, the latter are liable to pay rentals to the owners for the period it has remained or remains under their use.***
> ***8) The Deputy Commissioner has already assessed the rent payable in respect of this land for the period 01.01.1978 to 31.03.2009 under rules which amounts to Rs.2.49 crore and it cannot be denied by the DEO to them.***
> ***9) The only other lawful recourse for the DEO would be to challenge these allotments made to the DPs by the State Govt. as well as the mutations of ownership attested in their favour by the revenue authorities in the appropriate court of law so that the matter could be settled by the competent courts under law. It is neither justified nor lawful on the part of the DEO not to pay the rentals to the rightful owners of the land when the District Collector has duly assessed it and has conveyed it to DEO. He said that these DPs of 1947 have turned quite old pursuing their case before various authorities and keep approaching this office frequently for redressal of their genuine claims.***
> ***10) The Divisional Commissioner, Jammu implored the Defence Estates Officer, Jammu Circle to apprise the MoD about the whole gamut of facts of the case through his superiors so that this long pending case of the hapless Displaced Persons of 1947 could be sorted out before they breathe their last."***

32. Since the rent was not released in favour of the petitioners, the Government of Jammu and Kashmir, General Administration Department constituted another Committee vide Govt. Order No. 793-GAD of 2013 dated 23.05.2013 to examine the records of the agreement dated 14.01.1956 between the President of India and the Government of Jammu and Kashmir regarding assets of Jammu and Kashmir Ex-State Forces and also with regard to non-release of rent in respect of land in question in favour of the petitioners.

33. The detailed enquiry in this regard was conducted in pursuant to the application of Bhagat Singh and other displaced persons of 1947 from Pakistan Occupied Kashmir (for short PoK) seeking restoration of the land in question forming part of State land and which was occupied by the Army. The Enquiry Committee while submitting the enquiry report has held in favour of the petitioners after appreciating the stand of the Army, State Government and the Revenue Record in the following manner:

> ***"It is clear from the above that the land in question was allotted to Bhagat Singh and other Displaced Persons of 1947 on emergent basis in the matter of their emergent rehabilitation in those hard days of their dislocation from their native areas due to Indo-Pak War of 1947. This action was taken by the State authorities long before the execution of Agreement of 1956 between the State Government and Government of India. In the process these Refugees like Dula Singh and others who, too, were allotted State land from out of the same Khasra numbers 2, 3 and 6 of village Chatha were granted proprietary rights-thereon under Government Order No. 254-C of 1965. Reportedly they went on deriving benefit from the land continuously soon after allotment but their grievance is that the Army has prevented them from cultivating their land after 1978. Although they have simply used a small piece of their land for seeking their Firing point there yet they have occupied whole of the land so allotted to the applicants and they have been made to suffer great loss for not getting any benefit therefrom. This part of the land was, however, found to be vacant on spot.***
>
> ***It may be pertinent to submit here that the Deputy commissioner has already, after paying due consideration to the grievance of the applicants, factum of allotment of this land to them long before 1956 in the process of their emergent rehabilitation, view point of the Army that this land was earlier held by the State Forces and could not, therefore, be allotted to any person; and other relevant factors including human problem faced by the present DPs of 1947 in not getting any benefit from this land over which ownership rights also now stand vested in them, concluded that this land was allotted to the DPs in rightful manner by the State Government at the time of urgent need when this land was readily available with them. Further, number of the DPs similarly circumstanced who, too, have got allotment in the same Khasra numbers are continuously enjoying benefits therefrom as owners of the land without any interruption. But it is Bhagat Singh and his other DP families only who are being prevented to get benefit from their land on one excuse***

or the other. Anyhow, they, too, hold a vested right in the land and have, therefore, a genuine case for getting possession of their land from the Army in addition to the grant of rental compensation therefor at least from 1978 onwards.

In the case of Firing Range, the Deputy Commissioner has already made it clear that the Army could shift their Firing Range from this area to the newly raised Firing Range at Sunjwan or to some other alternate site. Anyhow, if they still require whole of this land or any part thereof for defence purpose, they can be advised to seek its formal requisition under the RAIP Act on payment of regular rental compensation to the interested persons at the prescribed rates as is one in other such cases."

34. Record reveals that the State Government has admitted that the land falling under Khasra numbers 2, 3 and 6 was allotted by the State Government to the Displaced Persons of 1947 in 1953 well before execution of the agreement wherein it was mentioned that the land in question had been under occupation of the State Government/allottee and the allotment orders and mutations attested in favour of the Displaced Persons of 1947 (petitioners herein) have not been challenged by the Defence Authorities before competent forum for cancellation which has assumed finality. Consequently, occupancy tenancy rights under Section 3-A of Agrarian Reforms Act, 1976 have been vested in favour of the petitioners till date. In this backdrop, the Divisional Commissioner, Jammu way back on 14.07.2011 had requested the Union of India through Ministry of Defence vide communication dated 14.07.2011 to release the rental compensation as assessed by the J&K Government in favour of the petitioners on top priority, which has not been done till date.

35. Record further reveals that so called agreement signed between the Union of India and the State Government in 1956 and various board proceedings held thereafter by the Army leads to the irresistible conclusion that both the parties knew and acknowledged that 1369K 04M land out of the total land of

Ex-State Armed Forces had been duly allotted to the DPs of 1947 for their resettlement by the State Government.

36. Therefore, the stand of Union of India that all the land of Ex-State Armed Forces, as it stood on 01.09.1949, had been transferred to the Indian Army, post facto, by an agreement made on 14.01.1956, is factually incorrect and cannot sustain in the eyes of law in light of the fact that all the allotments made by the State Government was strictly in consonance with law and earlier to the agreement.

37. The stand taken by the Union of India in the instant petition is contrary to the relevant revenue record and the findings recorded by the Committees constituted in this regard have gone in detail and have recorded the findings, which have been gladly and voluntarily accepted by the Union of India without any grouse.

38. The Union of India after having accepted the findings recorded by the various Enquiry Committees constituted in this regard is estopped under law to question the claim of the petitioners at this belated stage, more particularly, when there is no challenge to the same till date.

39. The Union of India was alive to the situation and yet slept over the matter which vindicates the stand of the petitioners. Record further reveals that 224K 10M of State land falling under Khasra numbers, 2, 3 and 6 of village Chatha, Jammu was allotted to the petitioners and many other DP families of 1947 and subsequently, the proprietary rights were also conferred upon them by virtue of mutations attested in their favour by the State Government under Government Order No. 254-C of 1965. These mutations remained intact and

valid till date and none of these mutations have ever been challenged by the Defence authorities before any court of law and have assumed finality.

40. As per existing rules, there is no denial of the fact that once a piece of land is allotted to a Displaced Person for his/her rehabilitation under G.O 578-C of 1954, the same cannot be taken away from him/her by any manner, means or by any other agency. The whole spirit behind such a provision is that a Displaced Person, who has once been uprooted from his native place in POK, due to partition should be rehabilitated and not to be uprooted again.

41. In the instant case, since the Deputy Commissioner has already assessed the rent payable in respect of the land in question for the period 01.01.1978 to 31.03.2009 under rules amounting to Rs. 2.49 crore, the same cannot be denied to the petitioners in addition to for the period, thereafter, when the land continues to be occupied by the Union of India.

42. The findings recorded by all the committees has been gladly and voluntarily accepted by the Union of India, which were in their active knowledge and after having accepted the same, the Union of India is estopped under law to re-open an issue which has been clinched with respect to the possession of the land in question and grant of rental compensation.

43. Even, the revenue entries which have been made, have also not been called in question by Union of India all along these years and thus, it does not lie in the mouth of the Union of India to agitate that the petitioners are not entitled for the rental compensation on the basis of an order which was passed way back in 1956, more particularly, when the rental compensation has already been assessed with respect to the land in question for the period 01.01.1978 to 31.03.2009 under rules amounting to Rs. 2.49 crore.

44. From a bare perusal of the operative portion of the agreement dated 14.01.1956 entered between Government of India and State of J&K, it is amply clear that the same is applicable to those properties and assets which pertains to Ex-State Forces of 01.09.1949 i.e. Properties and Assets which were owned/belonged to the Ex State Forces on 01.09.1949.

45. The record reveals that the subject matter of the land was never owned by Ex State Forces on 01.09.1949 nor it belonged to the Ex-State forces and, therefore, the claim of respondents 1 to 4 over the land in question which was allotted to the petitioners' family in the year 1953-54 falls flat. Even otherwise also, Respondents 1 to 4 cannot adopt two different yardstick in respect of the land falling under Khasra No. 2,3 & 6 of Village Chatha in District Jammu which was allotted to two separate groups of two displaced persons, one styled as Bhagat Singh group covering 24 displaced persons families and other as Dula Singh group comprising of 36 families. The record reveals that Bhagat Singh group was allotted 224 Kanals of land, whereas other group got 235 Kanals and 04 Marlas of land for cultivation in village Chatha. In so far as the allotment of the land made by the State Government in favour of the Dula Singh group is concerned, the same continues to be legal and has not been objected by the Union of India and it is only the allotment which is made in favour of Bhagat Singh group in the same Khasra that has been objected by Union of India on the basis of order dated 14.01.1956.

46. That the ownership rights in respect of the land in question has since been conferred upon the petitioner under Govt. Order No. 254-C of 1965 and mutations in respect of the land in question also stands attested in favour of the petitioners, which was in active cultivation possession of the petitioners till 1978

and thereafter, respondents 1 to 4 took it forcibly from the petitioners and did not allow them to cultivate the same, which was duly allotted to the petitioners' families.

47. It is pertinent to mention that said allotment orders and subsequent conferment of ownership and attestation of mutations in favour of the petitioner families qua the land allotted to the petitioner families were never called in question by the army authorities, and therefore, the allotments made in favour of the petitioner families, and, later conferment of ownership and attestation of mutations qua the allotted land are still intact. It is to be noted that land once allotted to a displaced cannot be cancelled/disturbed except under Rule 5 of the Allotment of Land To Displaced Persons Rules, 1954. For Facility of Reference, Rule 5 and Rule 15-A of the aforesaid Rules are reproduced as under:

> ***"5. Liability to cultivate allotted land personally and consequences of failure to do so:***
> ***(1) A displaced family, who may hereafter be, and such family as has already been, allotted land, shall be bound to bring such land under personal cultivation within six months of the date of delivery of possession on allotment or the date of this order, as the case may be, failing which such family shall forfeit its right to occupy such land.***
> ***(2) The land, of which the right to occupy is forfeited under clause (1) may be re-allotted to any other displaced family, which shall not have been settled on land by that time and failing it shall continue with the person, who has been in actual cultivating occupation thereof; provided such person is a land less tiller, and otherwise will be let out to a landless tiller, to the extent of the unit permissible.***
> ***Explanation. — "Personal cultivation" includes cultivation by any member of the family.***
>
> ***[15A. Except as otherwise provided under these rules, allottees shall not generally be disturbed from their allotted lands and in case where an evacuee returns and claims restoration of land which may have been allotted; the provisions of sections 14-A of the Evacuees' (Ad-ministration of Property) Act, Samvat 2006, may be invoked.]***

48. A bare perusal of Rule 5 of the aforementioned Rule reveals that a displaced person to whom land is allotted, is required to put the said land under cultivation with in a period of six months from the date of allotment, and in case the allottee fails to personally cultivate the same, within the prescribed period of six month, his right to occupy such land, is forfeited. Further, Rule 15-A provides that the land allotted to a displaced person cannot be distributed and in case where an evacuee returns and claims restoration of land which may have been allotted, the provisions of section 14-A of the Evacuees' (Administration of Property) Act, Samvat 2006 may be invoked. From the aforesaid legal position, it is clear that once the land is allocated to the petitioners, it cannot be distributed and the defence authorities, thus, have illegally dispossessed the petitioners' families from their allocated land.

49. From the above, what transpires is that the Army has been in occupation of the land in question since long and also that the land owners are not being paid the rental compensation in time. It further transpires that land of the petitioners are not being formally acquired by the respondents by having resort to Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation Act, 2013. This court finds that the subject land belonging to the petitioners in under unauthorized occupation of the respondent-Union of India since 1978 and continues to be so, even as on date.

50. It goes without saying that right to property is a constitutional right as envisaged under Article 300 A of the Constitution of India and the petitioners by no stretch of imagination can be deprived of their right to property being constitutional right without following due process of law.

51. It is emphatically clear that no one can be deprived of his/her property other than by following procedure prescribed under law. The facts mentioned above clearly reveals that the respondents have violated the basic rights of the petitioners and have deprived them of their valuable constitutional right without following the procedure as envisaged under law. The State and its agencies cannot dispossess a citizen of his property except in accordance with procedure established by law. The obligation to pay the compensation though not expressly included in Article 300 A can be inferred from the said Article.

52. The state in exercise of its power of 'Eminent Domain' may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and therefore, reasonable compensation must be paid. In a democratic polity governed by the rule of law, the Union of India could not have deprived the petitioners of their property without the sanction of law and it is obligatory on part of the Union to 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 itself to status beyond which is provided by the Constitution.

53. The right to property is now considered to be not only constitutional or statutory right but falls within the realm of human rights. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment etc and over the years, human rights have gained a multifaceted dimension.

54. In this context, I am fortified by the view taken by the Hon'ble Supreme Court in case titled **Vidya Devi versus state of Himachal Pradesh**

reported in (2020) 2 SCC 569. The relevant paragraphs are reproduced as under:

> ***"12.1. The Appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution. Article 31 guaranteed the right to private property, which could not be deprived without due process of law and upon just and fair compensation.***
>
> ***12.2. The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right in a welfare State, and a Constitutional right under Article 300 A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300 A, can be inferred in that Article.***
>
> ***12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai, wherein this Court held that: (SCC p. 634, para 6)***
>
> ***"6…. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid."***
>
> ***12.4. In N. Padmamma v. S. Ramakrishna Reddy, this Court held that: (SCC p. 526, para 21)***
>
> ***'21. If the right to property is a human right as also a Constitutional right, the same cannot be taken away except in accordance with law.***
>
> ***Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300-A of the Constitution of India, must be strictly construed."***

12.5. In Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P., this Court recognized the right to property as a basic human right in the following words: (SCC p. 379, para 30)

"30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property.

"Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists."

12.6. In Jilubhai Nanbhai Khachar v. State of Gujarat, this Court held as follows : (SCC p. 627, para 48)

"48. …In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

12.7. In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

12.8. The contention of the State that the Appellant or her predecessors had "orally" consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the Appellant of her property by the State.

12.9. 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. 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.

12.10. 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.

12.11. 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.

12.12. 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.

12.13. 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.

12.14. In Tukaram Kana Joshi & Ors. v. M.I.D.C., this Court while dealing with a similar fact situation, held as follows : (SCC p. 359, para 11)

"11. There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. The functionaries of the State took over possession of the land belonging to the Appellants without any sanction of law. The appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for

> ***acquisition, or requisition, or any other permissible statutory mode."***
>
> ***13. In the present case, the appellant being an illiterate person, who is a widow coming from a rural area has been deprived of her private property by the State without resorting to the procedure prescribed by law. The Appellant has been divested of her right to property without being paid any compensation whatsoever for over half a century. The cause of action in the present case is a continuing one, since the Appellant was compulsorily expropriated of her property in 1967 without legal sanction or following due process of law. The present case is one where the demand for justice is so compelling since the State has admitted that the land was taken over without initiating acquisition proceedings, or any procedure known to law. We exercise our extraordinary jurisdiction under Articles 136 and 142 of the Constitution, and direct the State to pay compensation to the appellant."***

55. Further, reliance is placed upon the judgment passed by the Division Bench of this Court in case titled "Shabir Ahmed Yatoo v. UT of J&K bearing WP(C) No. 174/2021," decided on 30.06.2022, wherein it has been held as under:-

> ***"5. The aforesaid facts and circumstances clearly reveal that the private land of the petitioner bas been taken over by the respondents forcibly without the consent of the petitioner and without taking recourse to any procedure prescribed in law. It is also an admitted fact that the petitioner has not been paid any compensation in respect of the said land though the determination/assessment of the compensation is under way as per the stamp duty rate.***
>
> ***6. It is well recognized that Right to Property is a basic human right which is akin to a fundamental right as guaranteed by Article 300 A of the Constitution of India and that no one can be deprived of his property other than by following procedure prescribe in law."***

56. In the similar facts and circumstances of this case, the Division Bench of this Court in case titled "**Chuni Lal Bhagat vs State of J&K & Anr,**

bearing OWP No. 682/2018, decided on 17.03.2023" has been pleased as held as under:

> ***"47. There is no law permitting the deprivation of the property of the citizens, the respondents are either to restore the land to the land owners or pay them the requisite compensation, as no one can be deprived of his Right to Property except in accordance with law in force in the State. The petitioners being small land owners are deprived of their property without payment of any compensation till date. The petitioners are, thus, entitled to payment of compensation as it has resulted in fraction of basic rights of Right to Property as guaranteed under Article-300A of the Constitution of India and are also entitled to use and occupation charges for the same.***
>
> ***48. In view of the aforesaid discussion, these petitions are also allowed. The respondents are directed to initiate the steps for acquiring the land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a period of eight weeks. The Deputy Commissioner concerned shall pay rent for use and occupation of the land of the petitioners' from the date, the respondents have taken possession of the same."***

57. In view of the aforesaid discussion, this Court is of the view that the judgments relied by learned counsel for the Union of India are not applicable to the facts and circumstances of the present case, in light of the fact that the mutations attested in favour of the petitioners families qua the land allotted to them were never called in question by the Army Authorities. Therefore, the allotment made in favour of the petitioners families, and, later conferment of ownership and attestation of mutation qua the allotted land, are still intact.

58. The law has been settled at naught by the Hon'ble Supreme Court in various authoritative pronouncements that right to property in view of the Article 300-A of the Constitution of India is a very important human right and no one can be deprived of his/her property, otherwise, than following due

procedure of law and it is a recurring cause of action. The petitioners in the present case were dispossessed from their land way back in the year 1978 admittedly, without legal sanction or following the due process of law and yet, no compensation has been paid to the petitioners in spite of the fact that the same has been assessed by the State Government. The delay and latches for paying the compensation after acquisition and rent will not come in way of the instant petition and thus, the Union of India is under legal obligation to pay the rental compensation assessed by the State Government to the petitioners and to initiate the process to formally acquire the land, if they so desire in accordance with law.

Conclusion:-

59. Therefore, in the light of the aforesaid discussion coupled with the settled legal position, the Union of India by no stretch of imagination can deprive the petitioners of their land without sanction of law and even if, the respondent-Union of India, requires whole of the said land or any part thereof for defence purpose, they may do so only by following due process of law. The petitioners in the present case are displaced persons of 1947, and the petitioners have been deprived of their land from 1978 onwards by the Union of India without following due process of law.

60. Thus, this Court is of the view that the action of the respondent-Union of India is illegal and unconstitutional which cannot sustain the test of law in the light of the stand taken by the State Government and also the findings recorded by the various committees' constituted in this regard whereby, the Union of India had been provided opportunity of being heard and after

scrutinizing the relevant revenue record, the findings had been recorded by the committees' which were gladly and voluntarily accepted by the Union of India without any demur.

61. In the aforesaid backdrop, the instant petition is **allowed** and the action of the Union of India is, accordingly, **held to be without following due process of law** in forcibly occupying the land in question since 1978 onwards and not paying the rental compensation.

62. Accordingly, respondents are directed to pay the rental compensation which has been assessed by the State Government from 01.01.1978 to 31.03.2009 amounting to Rs. 2.49 Crore to the lawful claimants including the petitioners after necessary verification, within a period of one month, from the date copy of this order is made available to them and the respondents are further directed to assess the rental compensation w.e.f. 31.03.2009 till date in the light of **the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** within a period of one month from today and subject to assessment of the said rental compensation, the respondents are directed to pay the amount so assessed to the lawful claimants including the petitioners within a period of one month, thereafter.

63. It is made clear that if the rental compensation already assessed by the Deputy Commissioner, Jammu for the period 01.01.1978 to 31.03.2009 is not made to the petitioners after verification within aforesaid period, the petitioners will be entitled to claim interest @ 6% per annum from Union of India from the date the same was payable and denied by the respondents and the interest component would also be payable to the petitioners for future rental

compensation w.e.f 01.04.2009 till date if the same is assessed/paid to the petitioners within time frame granted by this Court.

64. The respondents are also directed that in case, the subject land is required by the Union of India or by any other agency, the same shall be acquired strictly in conformity with the provisions of the Act of 2013 mentioned supra and in such eventuality, the compensation be paid to the petitioners after following due process of law and necessary verification.

65. For the stated reasons and circumstances, the petition **succeeds** and is **disposed of**, accordingly.

(Wasim Sadiq Nargal)
Judge

Jammu
14.12.2023
Vijay

Whether the judgment is speaking? Yes
Whether the judgment is reportable? Yes