

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

IA No. 48/2014 &
CM Nos. 4036, 4065 of 2020
in PIL No.19/2011
(Through Video Conferencing
from Srinagar)

Reserved on: 23.09.2020.

Pronounced on: 09.10.2020

Prof. S. K. Bhalla

...Petitioner(s)/Appellant(s)

Through: Mr. S. S. Ahmed, Advocate.
(On video conferencing from office
at Jammu)

Mr. Ankur Sharma, Advocate in IA
No. 48/2014
(On video conferencing from office
at Jammu)

Mr. Sheikh Faraz Iqbal, Advocate
in CM No. 4036/2020
(On video conferencing from office
at Jammu)

Ms. Meenakshi Salathia, Advocate
in CM No.4065/2020
(On video conferencing from office
at Jammu)

v/s

State of J&K and others

.... Respondent(s)

Through: Mr. Raman Sharma, Additional AG
(On video conferencing from
office at Jammu)
Mr. S. S. Nanda, Sr. AAG (On
video conferencing from office at
Jammu)
Mr. Adarsh Sharma, Advocate for

respondent no.14
(On video conferencing from office
at Jammu)

Mr. Sunil Sethi, Sr. Advocate with
Mr. Ravi Abrol, Advocate
(On video conferencing from office
at Jammu)

CORAM:
HON'BLE THE CHIEF JUSTICE

(On Video Conference from residence at Srinagar)

HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE

(On Video Conference from residence)

ORDER

GITA MITTAL, CJ

IA No. 48/2014

*"25. The **Public Trust Doctrine** primarily rests on the principle that certain resources like air sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjust to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:*

"Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third property must be maintained in particular types of uses".

34. Our legal system - based on English Common Law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea- shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.”

(Ref: (1997) 1 SCC 3880 M. C. Mehta v. Kamal Nath)

01. The instant case manifests the actual implementation of the age old adage that “*charity begins at home*”, not for the homeless, the landless, the labourer, the beggar or those without any source of income, but practiced by the powerful, the high and mighty, the rich who committed trespass on huge tracts of public land (including forests), and have acquired proprietary rights over them, not because of need, but out of sheer greed, completely unconcerned about the resultant damage to the national and public interest.

02. It could perhaps be said that acquisition of property is a natural aspiration of every human being but certainly not dishonest acquisition premised on the criminal offence of trespass committed on State lands held in public trust by the Government. In fact, the implementation of this adage, as is manifested in the present case, tantamounts to implementation of a “**loot to own**” policy. That these looters could motivate a legislation to facilitate their nefarious design, by itself speaks about their insidious and deep penetration into the corridors of power and authority; about the level and scale of their influence at all levels and suggests involvement of all those who mattered including in propounding and implementation of the policy.

03. We have not come across any such legislative State action legitimizing criminal activity at the cost of national and public interest with incalculable loss and damage to the public exchequer and the environment, without any financial (or other) impact assessment.

04. What is even more shocking is that despite a citizen of the erstwhile State of Jammu and Kashmir raising this issue by virtue of public interest litigation filed nine years ago in 2011 by way of the present PIL no.19/2011 and another in the year 2014, their pleas for justice to the people of Jammu and Kashmir have fallen completely on the deaf ears of the official respondents. The bureaucracy and Government officials are enjoying huge salaries and benefits for their acts of omission and commission each of which tantamounts to a penal offence and have thus actively encouraged usurpations of public lands. Those in power, authority and the respondents have completely failed to discharge their constitutional functions, their statutory duties and public law obligations towards the public to whom they owe their very existence.

05. In this writ petition filed in public interest nine years ago in 2011, the present application was filed by the petitioner five and a half years ago as back as on 13th March 2014 submitting that a multi crore Roshni land scam unearthed by the report of the Comptroller and Auditor General of India (CAG) for the ending year 31st March 2013, was required to be handed over to the CBI so that the matter could be thoroughly investigated and appropriate prosecutions be effected under the *Jammu and Kashmir Prevention of Corruption Act* and under Section 17 of the *Jammu and Kashmir State Land (Vesting of Ownership to the Occupants) Act 2001* to be undertaken.

06. In order to understand the above prayer, it is necessary to consider the unique legislative activity in the erstwhile State of Jammu & Kashmir.

07. On 9th of November, 2001, the *Jammu and Kashmir State Land (Vesting of Ownership to the Occupants) Act 2001* received the assent of the Governor which was published in the Government Gazette on 13th November, 2001. The Statement of Objects and Reasons for the enactment shacks the conscience of this Court and, therefore, is reproduced in extenso as under:

“Whereas most of the State land stands encroached upon and is not presently being utilized for the purpose for which it was reserved at the time of regular settlement. These lands have either come under various types of construction or plantations including orchards. The eviction of these lands is very difficult if not impossible because of the procedure established under law whereunder an encroacher has to be given an opportunity of being heard before he is evicted. Moreover, the encroachers are entitled to file an appeal, review, revision and thereby the State will be involved in protracted litigation and ultimately no substantial achievement shall be made in removing the encroachments. The removal of encroachment en-block will also lead to mass unrest.

In view of the above, the Hon’ble Finance Minister proposed the scheme called ‘Roshni’ in his Budget Speech 2000 whereunder it was suggested that the Proprietary Rights be given to the persons holding unauthorisedly till 1990 on payment of the cost equivalent to the prevailing market rate of the year 1990.”

(Emphasis supplied)

08. As a result of the above, the said enactment is referred to in common parlance as the ‘*Roshni Act*’. We shall also so refer to this enactment hereafter.

09. On the top of the Act, the respondents set out the following as the preamble:

“An Act to provide for vesting of ownership rights to occupants of State Land for purposes of generating funds to finance Power Projects in the State.”

10. Clause (h) of Section 2 of the Act defines the State land in the following terms:

“State land” means the land recorded as such in the Revenue Records and includes any land which has escheated to the Government under the provisions of any law for the time being in force in the State but does not include any Government or State land mentioned in section 3 of this Act: Provided that for purposes of Section 3-A of this Act, the State land shall include Kahcharai and Forest land;”

11. By virtue of Section 4(1-A)(ii) thereof, an ‘Occupant’ who is in possession of State land at the commencement of the Act may be considered for **conversion of the occupancy of the state land into “freehold rights”** in the prescribed manner. Section 8 captioned ‘*Vesting of rights*’ contains a non obstacle clause and enables vesting of all rights, title and interest in any State land in the occupant, subject to the conditions laid down in the law.

12. Section 8 (1) (c) prescribes that the occupant ‘*pays the price as is determined in the prescribed manner for such land to the Government.*’ Section 8(3) reiterates the requirement for deposit of the price as determined and notified.

13. That even though the enactment was passed in the year 2001, the legislature had fixed the reserve price of the land in any specific area as per the rates prevailing in the year 1990.

14. **This enactment saw amendments in 2004 and 2007,** each time progressively to the benefit of the occupant. For instance, at the time of initial enactment, under

Section 8(b) the total land which could be so vested was restricted to 10 kanals only.

By virtue of the amendment in 2004, this limit was increased to 100 kanals.

15. Section 5(B) of the Act passed in 2001 mandated that occupants seeking transfer of ownership only if they had been in actual physical possession of the land during the period 1990 to the commencement of the act in a particular area. The original Act, 2001, even though it was perpetuating and recognizing illegalities, limited the benefit thereunder to long term occupation. Unfortunately, an amendment was effected on 27th February, 2004, assented by the Governor on 19th March, 2004 and came into force upon its publication in the Government Gazette, which enabled all occupants who were in actual physical possession of the land in 2004 rendered eligible and again later it was relaxed to 2007. Each time the benefit of the amendment was given to pending applications. So delays in processing worked to the benefit of the occupants.

16. So far as vesting of agricultural lands in the occupants under the enactment was concerned, under Section 8(A), a prohibition was placed on the change of usage of land after its vesting. However, under sub-section (2) of Section 8A, any occupant who was desirous of using agriculture land for any other purpose after its vesting was enabled to do so with permission from the Committee or other authority, on payment of the prescribed price.

17. It appears that the Revenue Department made *J&K State Land (Vesting of Ownership to the Occupants) Rules, 2007* in purported exercise of power under Section 18 of the *Roshni Act* which came to be published in the Official Gazette as SRO 64 dated 5th May, 2007. It seems that no approval of these Rules was sought from the legislature and they were unauthorizedly published in Government Gazette.

Again in a shocking illegality, these Rules were in excess of the powers conferred by the Statute and in contradiction with the prohibitions contained therein.

18. This is done despite the mandate of the Constitution and the law laid down by the Supreme Court. Government officials had the gumption and absolute arrogance to publish rules which did not have the clearance of the legislature speaks volumes about the influence of the beneficiaries thereof.

19. The price for vesting of land had to be determined by the Statutory Committee in accordance with Section 12 of the Roshni Act. Under Section 12(2) the factors to be considered for price fixation included potential value of the land, irrigation and transport facilities available and proximity to road or urban areas as well as the market value of the land determined for the purposes of the stamp duty under the *Stamp Act*.

20. As against this statutory prescription, the rules provide for differential pricing (dependent on size of plot, category of occupants, land end use) prescribing different rebates over the land prices statutorily determined. This has enabled arbitrariness and encouraged nepotism into the process.

21. Sub Section 4 of Section 12 refers to agriculture land. As against the statutory prohibition, Rule 13(IV) prescribed that land which was under agricultural use, would be vested in an occupant free of cost. However, a token amount of Rs. 100/kanal shall be charged for maintaining proper revenue records.

22. The Roshni Act contains no provision for grant of any rebate, incentive or penalty. As against this, Rule 14 was incorporated providing a schedule of time and scale for providing incentive and penalty whereby rebates from 5% to 35% were provided, again enabling discretion and arbitrariness.

23. Under the Roshni Rules of 2007, agriculture lands could be transferred to applicants who were in physical possession for three years on the date of application. No period of occupation was prescribed in respect of the other lands.

24. It is trite that the Rules cannot be beyond statutory provisions. The *Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Rules, 2007*, are clearly ultra vires the parent Act.

25. In 2018, the *Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) (Repeal and Savings) Act, 2018 (Government Act No.XXXII of 2019)* was assented to by the Government on 7th day of December, 2018, however saving actions done under the Roshni Act.

26. Thus by a legislative act, valuable state land held in public trust by the State could be vested in persons who have trespassed thereon. Is this at all legally permissible? Does the Constitution of India enable such a legislative exercise? So far as State land is concerned, the mandate of the law laid down by the Supreme Court is absolutely clear and the answer to the question is in the negative. We may extract the observations of the Supreme Court in the case reported at *(2011) 11 SCC 396 : Jagpal Singh and Ors., Vs. State of Punjab and others*, wherein the Supreme Court set aside the view of the Collector, Patiala, that it was not in public interest to dispossess a person who had unauthorizedly encroached upon a pond situated at Rohar Jagir, Tehsil and District Patiala. The Collector had directed that the cost of the land as per Collector's rates be recovered from the respondents. It was observed by the Court that the appellants were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/ money power and in collusion with the officials and even with the Gram Panchayat. It was stated that such blatant

illegalities must not be condoned and even if appellants had built up houses on the land, they must be ordered to remove their constructions and possession of the land in question must be handed back to the Gram Panchayat. The letter of the Government of Punjab permitting regularization of possession of the unauthorized occupants was held to be not valid being illegal and without jurisdiction. The Supreme Court had finally observed as follows:

*“Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for **eviction of illegal/unauthorized occupants** of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the **Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful**, taking the help of other senior officers of the Governments. The said scheme should provide for the **speedy eviction of such illegal occupant**, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.*

Let a copy of this order be sent to all Chief Secretaries of all States and Union Territories in India who will ensure strict and prompt compliance of this order and submit compliance reports to this Court from time to time.

Although we have dismissed this appeal, it shall be listed before this Court from time to time (on dates fixed by us), so that we can monitor

implementation of our directions herein. List again before us on 3.5.2011 on which date all Chief Secretaries in India will submit their reports.”

Several authoritative and binding pronouncements have emphasized the above.

27. It is well settled that public property is held in public trust by the State. In this regard and the manner in which it has to be dealt with has been laid down by the Supreme Court in a host of judgments which are extracted hereafter.

28. As back as in 1987 in the judgment reported at **(1987) 2 SCC 295 Sachidanand Pandey v. State of W.B.**, the Supreme Court held thus:

*“40. On a consideration of the relevant cases cited at the Bar the following propositions may be taken as well established: **State-owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.**”*

(Emphasis by us)

29. In the pronouncement reported at **(2007) 8 SCC 75 Aggarwal & Modi Enterprises (P) Ltd. v. NDMC**, it was held as follows:

“23. Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e. it should be for public purpose and in public interest. Invitation for participation in public auction ensures transparency and it would be free from bias or discrimination and beyond reproach.”

(Emphasis by us)

30. It is important to note the binding principle laid down in *(2012) 3 SCC 1 Centre for Public Interest Litigation v. Union of India*, when the court observed as follows:

“89. In conclusion, we hold that the State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good.”

(Emphasis by us)

31. Recently in the judgment reported at *(2018) 6 SCC 1 Lok Prahari v. State of U.P.*, the Supreme Court observed as follows:

“27. In Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1, while considering the allocation of 2-G Spectrum, this Court observed that as natural resources are public goods, the “Doctrine of Equality” which emerges from the concepts of justice and fairness must guide the State in determining the actual mechanism for distribution of natural resources.”

(Emphasis by us)

32. We may usefully extract the principles laid down by the Division Bench of the Delhi High Court in the pronouncement reported at *(2005) 123 DLT 154*

Aggarwal & Modi Enterprises v. NDMC [which stands upheld by the Supreme Court in (2007) 8 SCC 75], as follows:

“40. The principles which can be culled out from the aforesaid decisions are the following:

(a) The demarcated approach for disposal of public property, in contradiction to the disposal of private property is that it should be for public purpose and in public interest.

(b) Disposal of public property partakes the character of a trust.

(c) Public purpose would be served only by getting best price for such property so that larger revenue coming into the coffers of the State administration can be utilized for beneficent activities to sub-serve public purpose, namely, the welfare State.

(d) For getting the best price, the public property should be put to public auction or by inviting tender with open participation i.e. ensure maximum public participation and a reserve price. This also ensures transparency and such an auction would be free from bias or discrimination and thus beyond reproach.

(e) Private negotiations should always be avoided as it cannot withstand public gaze and cast reflection on the Government or its official and is also against social and public interest.

(f) In exceptional cases, the authorities may depart from public auction or tender process and even dispose of the property at lower price than the market price or even for a token price. However, resort to this process can be taken only to achieve some defined constitutionally recognized public purpose, one such being to achieve the goal set out under Part-IV of the Constitution of India.”

(Emphasis supplied)

33. We may also usefully extract the observations of the Delhi High Court in the judgment reported at **(2016) 234 DLT 409 Indian Hotels Co. Ltd. v. NDMC** as follows:

*“50. The Council as a juristic entity would be the New Delhi Municipal Council and having perpetual succession and common seal, this juristic entity would have the power to acquire, hold and dispose of property. The members referred to as the Council under Section 4 would not be the juristic entity. They would be akin to the Board of Directors or the Governing Council of a company/society. The Chairperson of the Council is the one who performs the ministerial act of executing the required document concerning the immoveable property belonging to the Council: the juristic entity. But this would be subject to the sanction of the Council i.e. the members referred to under Section 4. The consideration would be the one which would be fetched at a fair competition. Now, the expression ‘let-out on hire’ which finds reference in sub-Section (1) of Section 141 is missing in sub-Section (2), but that in our opinion is irrelevant for the reason a statutory authority and especially a Municipal Statutory Authority would be obliged on the principle of a Trust to obtain the best price while creating any interest in its property in favour of a third party. **It is the inherent right of every proprietor to secure maximum consideration for his property in all transactions, apart from transactions where the law limits consideration that can be charged by the proprietor, for any public purpose or in public interest. In the case of governmental bodies like the NDMC, the implicit right of a proprietor to maximize consideration for its property is also a duty since these bodies own and transact property in a fiduciary capacity for the general public. A similar view has been expressed by the Supreme Court in the decision reported as (2012) 3 SCC 1 Centre for Public Interest Litigation v. Union of India, wherein the Supreme Court held that the doctrine of equality enjoins that the public is adequately compensated for the transfer of natural***

resources and/or their products to the private domain. Thus, in exercising its right/discharging its duty to secure maximum consideration for grant of licence in relation to property bearing No. 1, Man Singh Road, New Delhi, NDMC is within its power to ensure that such measures are adopted by it which fetch the maximum revenue. As a consequence of NDMC's proprietary right and fiduciary duty to secure maximum consideration for public property, Section 141(2) of the NDMC Act, 1994 must be interpreted to include within its ambit all transactions involving immovable property and the grant of licences cannot be de hors Section 141(2) of the NDMC Act, 1994. A harmonious construction of Section 141(1) and 141(2) of the NDMC Act, 1994 supports the view that it is incumbent on the NDMC to sell, lease, let out or otherwise transfer any immovable property at the value at which such immovable property could be sold, leased, let out or otherwise be transferred in normal and fair competition. The omission of the word 'let out' in Section 141(2) of the NDMC Act, 1994 is clearly on account of an error in legislative drafting. Section 141(1) lists the modes and the manner in which the immovable property belonging to the NDMC may be disposed off while Section 141(2) of the NDMC Act, 1994 provides the necessary condition of securing adequate compensation, which represents the fiduciary duty of the NDMC to the general public, to be fulfilled while disposing off the property as per Section 141(1) of the NDMC Act, 1994."

(Emphasis supplied)

34. As back as in 1997, the judgment reported at **(1997) 1 SCC 388 M. C. Mehta v. Kamal Nath and others** (extracted at the top of this judgment) the Supreme Court had authoritatively laid down the law and held thus:

"34. Our legal system - based on English Common Law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and

*enjoyment. Public at large is the beneficiary of the sea- shore, running waters, airs, forests and ecologically fragile lands. **The State as a trustee is under a legal duty to protect the natural resources.** These resources meant for public use cannot be converted into private ownership.”*

35. The above discussion would show that the public property has to be dealt with fairly and the distribution thereof has to be equally done for a public purpose ensuring maximum consideration. Its treatment has to be non-arbitrary on clearly defined principles as laid down in the authoritative and binding judgments above.

36. As back as in 1987 in *Sachin Danand Pandey*, the Supreme Court had held that State owned property is not to be dealt with at the absolute discretion of the Executive. Public interest was the paramount consideration. Nothing should be done which could give appearance of bias, jobbery or nepotism. It has repeatedly been held that State is the legal owner of the public property and holds natural resources as a trustee. In the instant case while distributing public lands, the respondents were bound by the constitutional principles of equality and larger public good which have been completely bypassed by the provisions of the Roshni Act.

37. The Supreme Court has specifically held that the State as a trustee is under a legal duty to protect the natural resources and these resources meant for public use cannot be converted into private ownership (*M. C. Mehta*). It has also been held that natural resources are public goods and doctrine of trust and fairness must guide the State in distribution of such resources. An audit by the CAG has revealed that out of the *actual transfer of around 3,48,200 kanals of land under the Roshni Act, the major portion of over 3,40,100 kanals has been transferred free of cost as agricultural land.*

38. By the aforesaid legislation, the respondents have encouraged encroachment of State and forest lands. The object of the enactment is completely illegal and unacceptable. The enactment has been worked to facilitate illegal vesting of State lands in the hands of powerful despite the mandate of the land regarding distribution of largess by the State. Certainly the projected object of supporting hydel projects out of the sale proceeds was only in order to give the semblance and propriety to the object. It has served no such purpose. The law was enacted without any analysis or the evaluation of the cost benefit or conducting any impact assessment and has been worked in a malafide manner.

39. The Roshni Act and the Rules prescribe a mode of dispossession of valuable public property in a most arbitrary manner not known by law. The Act and the Rules are in the teeth of binding law laid down by the Supreme Court. They have been worked most arbitrarily and unfairly is in complete violation of the mandate of Article 14 of the Constitution of India. The vesting of several lakhs of kanals of public land to private ownership has resulted in such land not being available for public projects and infrastructure including hospitals, schools, parks etc. As a result, the rights to health, education, a good environment of the residents of Jammu & Kashmir, all of which are essential concomitants of their right to life guaranteed under Article 21 of the Constitution of India of the residents are violated.

40. It appears that respondents considered themselves not bound by law and conducted themselves in the present matter with utter impunity. The ***Jammu & Kashmir Land (Vesting of Ownership to the Occupants) Act, 2001***, is in complete violation of the provisions of the Constitution and the binding principles laid down by the Supreme Court of India and as such is ultra vires to the Constitution , void ab

initio from its very inception. As such, the very enactment of the ***J&K State Land (Vesting of Ownership to the Occupants) Act, 2001*** as also its amendments and ***J&K State Land (Vesting of Ownership to the Occupants) Rules, 2007*** are completely unconstitutional, illegal, unjustified and void ab initio.

Facts leading to this application

41. This application was filed by Mr. Ankur Sharma, Advocate in this petition as an intervener. The apprehensions which have been expressed by the applicant in this application are articulated in Para nos. 2, 4, 5 and 6 which are as follows:

2. That recently the Comptroller and Auditor General of India came out with a Report ending March, 2013 which is also Report No.1 of the year 2014 and startling revelations were made by the Principal Accountant General (Audit) J&K Mr. S.C. Pandey on March 8th 2014 in an unprecedented Press Conference at Jammu wherein he while addressing the media exposed a massive scam running into several thousands of crores in the implementation of J&K State Lands (Vesting of Ownership to the Occupants) Act, 2001 also known as Roshni Scheme. In the said press conference Mr. S.C. Pandey lambasted the senior functionaries of the State Government including those heading the Administrative Department in the Civil Secretariat for their indifferent, non-cooperative and hostile treatment to the Audit parties while conducting the test check of Roshni cases in six Districts of the State. During the press conference the Principal Accountant General, J&K also raised fingers over the indifferent attitude adopted by the Chief Secretary of the State as the Audit Organization had finally approached his office for compelling the subordinate officers to provide the records sought for during Audit. A copy of the press clipping of Daily Excelsior dated 9th March, 2014 evidencing the averment made hereinabove is enclosed herewith and marked as ANNEXURE- 'A'. Prior to this a National Daily The Hindu, a

reputed newspaper of the country also published a story in its issue dated March 5th, 2014 under the caption 'CAG Report observes huge irregularities in Roshni Scheme'. A copy of the said News item is enclosed herewith as ANNEXURE-B

3. That the Hon'ble Court may very kindly appreciate that in the aforementioned press conference Mr. S.C. Pandey at the very outset stated that every possible attempt was made to cover up the biggest ever land scam by denying vital information for the Audit and Rs.225 crore loss to the Ex-chequer which came to the fore in the test checked cases and according to- him this was just a tip of an ice berg.

4. That before proceeding further it is apt to point out here that State land measuring 2046436 kanals (twenty lacs forty six thousand four hundred and thirty six kanals) is under the illegal occupation of land mafia in State of J&K including Government Officers/Legislators/Ex-Legislators and Ministers and this Hon'ble Court on 04-09-2013 passed an order in the above titled Public Interest Litigation directing Divisional Commissioners Jammu/Kashmir to divulge the complete details of the illegal occupants who have encroached more than 20 lacs Kanals of State Land and the said information has already been supplied to this Hon'ble Court.

5. That in the Report No.1 of the year 2014 which is just a tip of the ice berg and reflects the test check of few cases of violations with regard to the State Lands situated in six Districts namely Anantnag, Jammu, Udhampur, Pulwama, Srinagar and Budgam and the violations include undue benefit of higher rebates, irregular transfer of lands to Trusts etc, irregular mutation of lands, deficient system to check ceilings on permitted land transfers, transfer of lands without reference to authentic revenue records, irregular transfer of lands adjoining roads and highways, transfer of lands to persons not in its actual physical

possession, non-eviction of unauthorized occupants, non-reconciliation of Departmental receipt with Treasury Accounts and transfer of agricultural lands free of cost against the provisions of the Act. A copy of the report No.1 of the year 2014 is enclosed herewith as ANNEXURE-'C'.

6. That before proceeding further it is relevant to **reproduce the operative part of the aforementioned report** which is captioned as **Exclusion** and the same reads as under:

"The principle objective of the Act was to raise resources for investment in power sector and the Government had estimated (November 2006) resource mobilization of about Rs.25448 crores by selling 2064972 kanals state land under unauthorized occupation. However, it was observed that only Rs.76.24 crore (24 percent) reportedly realized against a demand of Rs. 317.54 crore raised by the end of March, 2013 in the actual transfer of 348160 Kanals in the State. Thus, the principle objective of the Act viz, raising of resources for investment in power sector was not achieved though the state has lost sizeable lands. Of this, the major portion (3,40,091 Kanals) has been categorized as 'agricultural' and hence transferred free of cost. Balance is residential use: 6949 Kanals, commercial use: 990 kanals and Institutional use: 130 kanals. In 547 cases covering revenue of 31.53 percent (Rs.100.12 crore out of Rs.317.54 crore) of the total transfers approved in the state and 0.19 percent of land i.e. 666 kanals out of 3,48,160 kanals of land, the statutory committees had fixed the price at Rs.325.39 crore at an average rate of Rs.48.86 lakh per kanal (before allowing rebates and incentives). After allowing the discounts over the land price fixed by the statutory committees, the applicants were asked to pay only Rs.100.12 crore. Thus there was a loss of Rs.225.26 crore to the State Exchequer. Further, after transfer of

3,48,160 kanals under the Act, new encroachments are continuing unabated as area of public lands under encroachment was 20,46,436 kanals in March, 2013 as against 20,64,972 kanals in November, 2006.

The above points were reported to the Government (July, 2013); the government in its interim reply stated (September, 2013) that there was no deviation in the implementation of Roshini Act and action would be taken against erring officials if anything is found wrong. The reply of the Department does not relate to audit findings. The Department confirmed that the rules framed by the Government were not approved by the Legislature, there being no statutory requirement to this effect. Since the rules made have been published in Gazette, the general public and the legislature in any case deemed informed about its provisions. This per-se cannot justify the infirmities in the Rules”.

Background facts

42. Before dealing with this application, few background facts are necessary. A writ petition in public interest which was registered as PIL No. 19/2011, was filed by Prof. S. K. Bhalla on 17th August 2011, an academican and then a Principal of the Government Degree College, Mendhar pointing out to allegations of land grabbing leveled against influential people including police officers, politicians and bureaucrats occupying responsible positions in the Erstwhile J&K State in connivance with land mafia, making the prayer for constitution of an SIT and seeking appropriate criminal, disciplinary and other actions against those guilty. The

writ petitioner referred to the following specific instances of land grabbing in Paras 18-20 of the writ petition:

“18. That the petitioner also wants to highlight a brazen case of land grabbing of proprietary land of two brothers namely Tilak Raj and Hem Raj sons of Karam Chand residents of Chak Lalu Shah Tehsil and District Jammu whose land measuring 342 kanals-4 marlas comprised in Khasra Nos. 1, 2,3, 3 min, 33, 34 and 36 has been encroached by none else than the three daughters of Minister for PHE, Irrigation and Flood Control J&K Government Sh. Taj Mohi-ud-Din. The Revenue record of the above referred land fully demonstrates that the land is duly owned by two brothers Tilak Raj and Hem Raj but at present the Khasra Girdawari reflects the illegal occupation of Ms. Shabnam Taj, Nausheen Taj and Arshi Taj daughters of Taj Mohi-Ud-Din the Minister for PHE, Irrigation and Flood Control in the present dispensation.

Copies of the Revenue extracts / Khasra Girdawaries of the said land showing ownership of Hem Raj and Tilak Raj and also ‘kabza Najaiz’ of three daughters of the above referred Minister are collectively annexed herewith and marked as ANNEXURE-‘T’ respectively.

19. That since both the brothers are pitted against the daughters of the sitting Minister and a Senior PCC Leader as such their efforts did not materialize to get the VVIPs encroachers evicted from their duly owned proprietary land referred hereinabove. The said three daughters of the Minister have raised a big farm house over the said Land and the adjoining land for leading a luxurious life and various reports of the Revenue Agency could not deter them and rightly so in view of the clout of their father who happens to be a Cabinet Minister. The petitioner encloses herewith a copy of the report submitted by settlement Officer,

Jammu vide his No. SOJ/R/07/1521 dated 11-10-2007 which is self explanatory and shows the plight of the owners and the strength of the three daughters of a powerful Minister.

A copy of the said report dated 11-10-2007 is enclosed herewith as ANNEXURE-‘V’.

20. *That one fails to understand as to how the three daughters of a Cabinet Minister have been recorded in the Revenue record as illegal occupants by branding their possession as ‘kabza Najiaz’ in respect of the above referred land when the said land was not alienated by its owners reportedly to the Minister’s daughters. The Revenue Agency is handicapped in view of the status enjoyed by the illegal occupants and the intervention of this court is warranted to meet the ends of justice. One of the brothers have already expired in the struggle and the other one is also a senior citizen and striving hard to retrieve his land from the influential daughters of the present PHE Minister.”*

43. On 7th September 2011, notice was issued by this court to the respondents No.1 to 5 in the matter.

44. On 4th September 2013 this Court had recorded the following order:

“Mr. Siddiqui, learned AAG has filed information with regard to regularization of land under the ‘Roshni Act’ in the court today, which is in four volumes. The same is taken on record and a copy of each of the volumes be furnished to the learned counsel for the petitioner during the course of the day.

Mr. Ahmad, Learned counsel for the petitioner has however brought to our notice that huge area of State land is in illegal occupation of the land mafia which is comprised of bureaucrats, legislators and others as per the allegations. Reliance in this regard has

been placed on a reply furnished to a starred question given in the Assembly i.e., AQ No.618. According to the information Question divulged, he illegal occupation of land and the area, district wise, has been given in column 'a' of Annexure (A) which is attached with the CMA No. 555/2013 and same is as under:-

S. No.	Question	Reply	
a)	District-wise, the area of State Land under illegal occupation of land mafia and other encroachers in the State	District-wise, the area of State Land under the occupation of various individuals are as under:	
		District	State land under occupation (in Kanals)
		Anantnag	33710
		Bandipora	46920
		Baramulla	114135
		Budgam	43742
		Ganderbal	24544
		Kulgam	29114
		Kupwara	54034
		Pulwama	40620
		Shopian	13180
		Srinagar	44294
		Doda	177551
		Jammu	160358
		Kathua	104746
	Kishtwar	75159	
	Poonch	129727	
	Rajouri	396018	
	Ramban	167521	

		<i>Reasi</i>	141524
		<i>Samba</i>	97133
		<i>Udhampur</i>	152416

The Annexure also divulges information with regard to the area of land regularized under the 'Roshni Act', and the district-wise detail is as under:

<i>S. No.</i>	<i>Question</i>	<i>Reply</i>	
a)	<i>District-wise, the area of Land regularized under "Roshni Act" indicating the revenue generated on this account.</i>	<i>The details with regard to district-wise area of land approved by the concerned price fixation committee are as under:</i>	
		<i>District</i>	<i>Total land approved by the committees (in Kanals)</i>
		Anantnag	4324
		Bandipora	11002
		Baramulla	4200
		Budgam	3321
		Ganderbal	809
		Kulgam	941
		Kupwara	3139
		Pulwama	3311
		Shopian	1849
		Srinagar	496
		Doda	54212
		Jammu	44915
		Kathua	26292
		Kishtwar	18185
		Poonch	6597
		Rajouri	283444
		Ramban	24993
		Reasi	13380
		Samba	8585
		Udhampur	90607

Mr. Ahmed, learned counsel for the petitioner has argued that regularization of land under Roshni Act, has expired in the year 2007 and the information divulges in answer to the starred question is

somewhere in the year 2012-2013. However, **vital part of the information has been withheld by not divulging the names of those who are in illegal occupation of this land as is evident from the answer to para- D** of the starred question which says that the exact information regarding particulars of illegal occupants of State land is voluminous. However, the district-wise details of State land is indicated in part “a” i.e., first table of this order.

Mr. Ahmed has argued that citizens of the State are entitled to know the identity and the names of illegal occupants of the State land and would also be interested in their eviction so that public exchequer is not deprived of the revenue as well as the valuable land grabbed by those persons which as per allegations is almost 20 lac kanals.

Accordingly, **we direct that complete information divulging names of those be disclosed to this Court so as to take a view for further course of action. Needful shall be done within a period of four weeks with a copy in advance to the learned counsel for the petitioner.** Copies of this order be furnished to the learned counsel for the parties.

List for further consideration on 30th of September 2013.”

(Emphasis supplied)

45. During the pendency of the writ petition, several status reports have been filed by the respondents.

46. Mr. S. S. Ahmed has drawn our attention to several reports which are on record of the case even by the Divisional Commissioner Jammu and Divisional Commissioner Kashmir regarding the illegal encroachments of the State lands which support the observations made by us.

47. Pursuant to the above order, the following reports have been filed before us by the Divisional Commissioner Jammu and Divisional Commissioner

Kashmir which runs in several volumes in this Court the details whereof are as follows:

S.No.	District	Letter No.	Dated
01.	District Ramban	829-3/SQ	29-11-2013
02.	Deputy Commissioner Doda	980-81/SQ	25-10-2013
03.	Deputy Commissioner Poonch	DCP/SQ/974-75	26-10-2013
04.	Deputy Commissioner Kathua	DCK/SQ/2013-14 1007-09	28-10-2013
05.	Deputy Commissioner Kishtwar	DCK/SQ723/013	23-10-2013
06.	Deputy Commissioner Udhampur	ACR14/38/1903-05	30-1-2013
07.	Deputy Commissioner Reasi	DC/RSI/13/14/1251-54/SQ	01-11-2013
08.	Deputy Commissioner Samba	DCS/SQ/13-14/801	04-11-2013
09.	Deputy Commissioner Samba	DCS/SQ/13-14/803	
10.	Deputy Commissioner Rajouri	SQ/856	09-11-2013
11.	District Baramulla Tehsil Pattan	Nil	
12.	Tehsil Akhnoor	OQ/7529753	22-11-2013
13.	Niabat Arnia Tehsil Bishnah	TB/OQ/2013-14-570	22-11-2013
14.	Tehsil R.S. Pura	Nil	Nil
15.	Tehsildar Jammu	2294/OQ	23-11-2013
16.	Tehsildar Settlement Jammu	Nil	nil

48. Mr. S. S. Ahmed submits that the respondents had no jurisdiction in law to close the cases which were required to be referred to DoPT. Mr. S. S. Ahmed on earlier occasion had submitted that this was done in violation of the law laid down by the Supreme Court in the judgment reported at (2012) 3 SCC 64, *Subramanian Swamy v. Manmohan Singh and Station House Officer CBI/ACB/Bangalore vs. B. A. Srinivasan and another, Criminal Appeal No.1837 of 2019 @ SLP (crl.) No.6106 of 2019*, decided on 5th December 2019.

49. Mr. S. S. Ahmed submits that the respondents had no jurisdiction in law to close the cases which were required to be referred to DoPT. Mr. S. S. Ahmed on earlier occasion had submitted that this was done in violation of the law laid down by the Supreme Court in the judgment reported at (2012) 3 SCC 64, *Subramanian Swamy v. Manmohan Singh and Station House Officer CBI/ACB/Banglore vs. B. A. Srinivasan and another, Criminal Appeal No.1837 of 2019 @ SLP (crl.) No.6106 of 2019, decided on 5th December 2019.*

50. On the 13th March 2014, Mr. Ankur Sharma, a resident of Kathua, and then a law student, apart from filing of the present application also filed *PIL No. 41/2014 titled Ankur Sharma vs. State of J&K and ors.* seeking the following prayers:

“i) Declaring the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Act, 2001 and the rules framed thereunder i.e. The J&K State lands (Vesting of Ownership to the Occupants) Rules, 2007 as unconstitutional/illegal being ultra-vires the Constitution of State of Jammu and Kashmir.

ii) Commanding the respondents to disclose before this Court the names of the illegal occupants/beneficiaries who have been conferred the benefit of the aforementioned Act which is illegal/unconstitutional and all such orders of regularizations and consequential mutations attested under the impugned Act be declared void ab-initio/nonest/illegal and the State land so regularized be retrieved from the said illegal occupants/beneficiaries.

iii) Commanding the respondents to retrieve the State Land measuring twenty lacs forty six thousand four hundred and thirty six (2046436) kanals which is under the illegal occupation of the land

mafia and the said encroachment is evident from the reply of the Revenue Department to a Starred A.Q No. 618 tabled by Mr. Yash Paul Kundal (MLA) in the J&K State Legislative Assembly.

iv) Commanding the respondents not to issue any further SRO/Notification for extending the date for inviting fresh claims under the impugned Act for conferring ownership rights to the illegal occupants with regard to the left over state land i.e. Land measuring twenty lacs forty six thousand four hundred and thirty six (2046436) kanals.

(v) Commanding the respondents not to process any further case for conferment of ownership rights under the impugned Act/Rules.

vi) Commanding the respondents to file an Action Taken Report (ATR) with regard to the implementation of Section 8(50 (6) and Section 9 of the Jammu and Kashmir State Lands (Vesting of Ownership) to the Occupants) Act, 2001.

xxxxxx”

51. On 4th March 2020, we directed the listing of PIL No.19/2011 with PIL No.41/2014.

52. In the writ petition, several serious matters including unauthorized occupation of large chunk of land by encroachers have been noticed in several orders.

53. We note three major instances of complete illegalities pointed out on court record:

A) ***Encroachment in (784 kanals, 17 marla of land in Khasra No. 746) Village Gole, Tehsil Jammu of land transferred to JDA***

54. ***CM No. 846/2013*** was filed by the petitioner Prof. S.K. Bhalla wherein it is pointed out that ***784 kanals 17 marlas of land covered by Khasra No.746*** situated at ***Village Gole, Tehsil Jammu*** has been encroached upon.

55. The order dated 18th March 2014 specifically recorded that **Khasra No.746 comprised of 2235 kanals, out of which 333 kanals 13 marlas stood transferred from Nazool Department to the Jammu Development Authority.**

56. On this application, on 24th April 2014, a direction was made to the Deputy Commissioners of District Jammu, Samba, Udhampur, Srinagar, Budgam and Pulwama to submit the compliance report with regard to ***handing over the relevant record of the present case to the Director Vigilance*** who was enquiring into the matter.

57. On 30th May 2014, the court directed the Deputy Commissioners of the six districts again to ensure that the record is handed over.

58. On 10th June 2014, it was noted that only Deputy Commissioners of District Jammu and Samba had furnished the record whereas Deputy Commissioners of Udhampur, Srinagar, Budgam and Pulwama had not handed over the record to the Vigilance.

59. The position remained same on 14th July 2014, 5th August 2014 and 27th August 2014.

60. The matter of handing over the records for the report of the Vigilance has not engaged any attention thereafter.

61. In addition thereto, the records of the case shows that on 13th May 2014, it was observed by this court that in compliance of the order dated 19th February 2014, the Deputy Commissioner, Kathua, had submitted a report. The ***Deputy Commissioner was directed to indicate as to why the action in accordance with law was not taken against all those persons who had encroached upon State land/common land/Kachharai land.***

The needful in this regard has also not been done till date.

62. As back as on 1st September 2014, this court had noted the reluctance on the part of the concerned authorities to take action against persons who had encroached upon the State land.

63. *The above court proceedings establish the reluctance of these senior officers and all authorities – revenues, Jammu Development Authority etc. to assist the inquiry, which reluctance in fact tantamounts to obstruction and hurdles created by these authorities to prevent disclosure of the truth, protect law breakers and facilitate misappropriation of public properties of which they were guardians. Such acts and omissions of these officials tantamount to complicity in the illegal acts and criminal offences. These officers in the State have flouted court orders with impunity.*

B) 154 Kanals of land belonging to the Jammu Development Authority (JDA) permitted to be encroached, constructed upon and converted to commercial use

64. Let us note a second startling instance where despite *revenue records (the Girdawari) recording JDA as owner of the land*, it stands *transferred to private persons under the Roshni Act*.

65. On 11th August 2020, by way of CM No.1972/2020, the petitioner had pointed that 154 kanals of land belonging to the Jammu Development Authority (JDA) has been regularized in favour of the encroachers under the shield of Roshni Act (repealed in 2018).

66. We may usefully extract the averments made by the applicant which reads as follows:

“6. That the Government of Jammu and Kashmir vide SRO No.263 dated 09-08-2004 ordered the transfer of vacant State Land falling under the jurisdiction of JDA & SDA to Jammu/ Srinagar Development Authorities with immediate effect and State Land measuring 154 Kanals and 05 Marlas bearing Survey No.781 was one of such chunks of land transferred to JDA vide SRO supra being situated within Municipal Limits of Municipal Corporation Jammu and as such was outside the provisions of J&K State Lands (Vesting of Ownership to Occupants) Act, 2001 as Section 3(b) of the said Act clearly provided that provisions of the Act shall not apply to such State Lands as is held by any Government Department or Institutions under the control of the Government. A copy of the said SRO 263 dated 09-08-2004 is enclosed herewith and marked as ANNEXURE-II.

7. That before proceeding further, it is relevant to place on record a copy of the Khasra Girdawari of Village Deeli for the year Khariief 2004 wherein the entry of JDA with regard to aforementioned State land measuring 154 Kanals 05 Marias comprised in Survey No.781 was recorded, copy whereof is enclosed herewith and marked as ANNEXURE-III.

8. That with a view to grab a portion of the aforementioned JDA land, the said Sh. Bansi Lai Gupta on 20-12-2006 made an application to the Tehsildar (Settlement), Jammu on the prescribed format for conferment of ownership rights of land measuring 05 Kanals 02 Marias situated in Village Deeli, Tehsil and District Jammu without enclosing the mandatory documents as mentioned in Section 5(2) of J&K State Lands (Vesting of Ownership to Occupants) Act, 2001. A

copy of the said application dated 20-12-2006 is enclosed herewith and marked as ANNEXURE-IV. In the said application Sh. Bansi Lai Gupta claimed his possession over the land in question since 1997. It is apt to point out here that Sh. Bansi Lai Gupta in his affidavit dated 21-12-2006 duly attested by Notary Jammu City in para 2 admitted that he is in possession of 05 Kanals 02 Marias of State land in Khasra No.781 and applied for commercial purposes and in para 3 of the said affidavit, Sh. Bansi Lai Gupta admitted that entry on his name has been entered in Khasra Girdawari whereas in point No. 10 of his application for conferment of ownership rights dated 20-12- 2006, Sh. Bansi Lai Gupta regarding the extract of Girdawari alongwith Shajra of such land clearly mentions, "covered with plinth and four wall".

A copy of the affidavit of Sh. Bansi Lai Gupta dated 21-12-2006 evidencing the averments made hereinabove is enclosed herewith as ANNEXURE-V.

X x x x

13. That from the aforementioned **field reports and revenue record** it is **crystal clear that the land in question had been recorded in the name of JDA in Khariief 2004 and all the field reports made by Patwari Halqa, Naib-Tehsildar, Digiana and Tehsildar (Settlement) Jammu unequivocally confirmed and asserted that there is no Girdawari entry in the revenue records in the name of Sh. Bansi Lai Gupta, however he had covered the land with plinth and four wall. Since the land was duly recorded JDA land in the revenue record and in view of bar contained in Section 3(b), the case in hand for conferment of ownership rights should have been rejected at the threshold on this score only by the then District Collector, Jammu i.e. respondent No. 17 and further there was an additional ground to reject the application for conferment of ownership rights under Section 5(2) of J&K State Lands (Vesting of Ownership to Occupants) Act, 2001 as the application was not accompanied with extract of Girdawari and Tatma Shajra, however despite the categoric reports of field revenue agency, the case of Sh.**

Bansi Lai Gupta was processed in undue haste for the obvious reasons and the mandatory provisions of Section 3(b) and Section 5(2) of the J&K State Lands (Vesting of Ownership to Occupants) Act, 2001 were given a go-bye to confer undue benefit to highly influential Sh. Bansi Lai Gupta. Here it is respectfully submitted that in their field reports the Patwari/Girdawar, Naib-Tehsildar and Tehsildar should have categorically stated about the nature of the land and its transfer to JDA way back in the year 2004 and should have also enclosed the extracts of girdawari showing entry of JDA with a recommendation not to process the case for conferment of ownership rights in view of specific bar contained in Section 3(b) and Section 5(2) of J&K State Lands (Vesting of Ownership to Occupants) Act, 2001.”

(Emphasis supplied)

67. Despite repeated opportunities, the JDA did not file any reply to this application. On 27th August 2020, this court was compelled to give last opportunity to do so.

68. In a dishonest effort to cover up its illegalities, The JDA has filed a reply dated 28th August 2020 (Page-1782 of the record) wherein the preliminary submissions, a shocking state of affairs is stated:

“ ***Preliminary Submission: i)*** xxx

a) That the **land measuring 154 Kanals 05 marlas bearing Khasra No. 781 situated at Deeli has been transferred in favour of answering respondent’s authority (Jammu Development Authority) in the year 2004 vide SRO No.263 dated 09.08.2004** under the provisions of J&K State Lands (Vesting of Ownership to Occupants) Act, 2001.

b) That it is apt to mention over here that the total land of Khasra No. 781 Deeli is 198 kanals 15 marlas and out of this land the land measuring 154 kanals 05 marlas only stood transferred in favour of JDA as mentioned

above. The rest of the land in this Khasra No. has not been transferred in favour of JDA vide aforementioned SRO under the provision of J&K State Lands (Vesting of Ownership to Occupants) Act, 2001.

ii) *That apart, the demarcation as well as revenue papers of the aforementioned land viz. 154 kanals 05 marlas transferred in favour of JDA has not been carried out as yet.*

(Emphasis by us)

Clearly the attempt is to protect the encroachers on the J.D.A. land by casting a cloud over the description and location of land transferred to the JDA.

69. So far as the official respondents are concerned, the Divisional Commissioner Jammu has filed the status report on 26th August 2020 stating that in order to resolve the matter, the Deputy Commissioner Jammu vide order dated 25th August 2020 has now constituted a Committee with the Additional DC (L/O), Jammu as a Chairperson and the Director Land Management, JDA; Tehsildar, JDA; and Tehsildar Jammu South as its members for demarcation of the JDA land falling under Khasra No.781 and identification of the encroachers of the JDA land in this Khasra.

70. The *Communication dated 01-06-2011* addressed by the VC, JDA to the DC, Jammu and an *order dated 04-12-2019 of the Special Judge (Anti Corruption) Jammu amply state the correct position.*

71. We have strong apprehension that the JDA and the Revenue authorities have now commenced a huge cover up exercise now.

C) **Fate of land measuring 66436 kanals transferred by the Government to the Jammu Development Authority-refusal by the JDA to comply with court orders for demarcation**

72. A third instance has engaged the attention of this court. On 12th November 2014, it was noted by the court that the **total land transferred by the Government to the Jammu Development Authority** under various orders was **86941 kanals, out of which only 19391 kanals and 11 marlas have been demarcated. The remaining land measuring 66436 kanals and 01 marla remained un-demarcated.**

It was observed that the Revenue Department had entered into “*superficial correspondence with the JDA*” with regard to transfer of the land and its demarcation.

73. On 12th November 2014 itself, directions were issued to the Revenue Department as well as JDA to **file a status report with regard to the demarcation of this balance land.**

This direction has not been complied with till date despite passage of six years. Having seen the record of this case, we are compelled to state that the non-compliance was for obvious reasons. It reflects the depth of involvement of the official machinery with the encroachers

74. On 10th December 2014, this was recorded by the court:

“2. *In the status report filed by the Deputy Commissioner, Jammu, it has been admitted that more than 40 years have been lapsed after passing of Government Order No, 46 of 1973 and 10 years have been lapsed after passing of Roshni Order, but no report is forthcoming to show that any detailed survey was conducted either by the Revenue Department or by the JDA. In the revenue record, the name of JDA has been entered in Girdawari Register without following due procedure resulting in lot of confusion. Accordingly, a detailed order covering the aforesaid issues has been passed and committees have been constituted*

for demarcation of land and to dispose of all the cases in time bound manner. A copy of order dated 01.12.2014 has been placed on record as annexureR-1.”

(Emphasis supplied)

Even on that date, the court had observed that the demarcation process was in the offing.

75. The court had also passed the following directions on that date:

*“9. Needless to observe that this Court being the Custodia Legis, directs that **no petition or other litigation shall be entertained by any other forum and the same should be listed before the First Division Bench.**”*

(Emphasis by us)

76. On 10th December 2014, the court had directed video graphing of the demarcation process.

77. The matter of demarcation of the JDA land was again taken up by the court on 11th April 2017 clearing noticing the lack of any will on the part of the JDA or the revenue authorities to comply with the directions made by the court or to secure the public land.

78. In this regard, on the 19th July 2017, the Vice Chairman of the JDA and Inspector General of Police, Jammu were directed to file compliance failing which they were to remain present in court. It would appear that even this direction did not move the respondents.

79. On 4th August 2017, specific directions were made for demarcation to the JDA which are as follows:

“1. That the Vice Chairman, Jammu Development Authority shall apprise the Deputy Commissioner, Jammu and Deputy Commissioner, Samba about the requirement of manpower as well as shall furnish the particulars of the revenue record of the villages/locations which are needed by it. On receipt of the aforesaid communication, the revenue records as sought for by the Vice Chairman, Jammu Development Authority shall be supplied by the revenue department within a period of two weeks from the date of receipt of such communication.

2. On receipt of the revenue records, the JDA shall ensure that the land which is demarcated and is free from encroachment is fenced against so as to prevent it from encroachment in future.

3. The Inspector General of Police (IGP), Jammu shall provide police protection to the officers of the Jammu Development Authority who are carrying out the demarcation work in pursuance of the order passed by this Court.

Needless to state that the officers of the JDA and officers of the revenue department shall work in coordination with each order and try to accomplish the work of demarcation within a time limit fixed by this Court.

4. After four weeks, the Vice Chairman, Jammu Development Authority, shall file an updated status report.”

More than three years have passed since the passing of this order.

Nothing has been done by JDA in this matter. This clearly manifests the attempt to assist encroachment and illegal occupation of this land.

80. On 13th September 2017, a ruse was put up by the Jammu Development Authority complaining of failure of the revenue department to provide officials and police department to provide police protection. The **direction to video graph the demarcation process by the JDA to identify the obstructers was reiterated** on 13th September 2017.

81. On 8th December 2017, this court had directed the appearance of, amongst others Vice Chairman, Jammu Development Authority; DCs Jammu, Samba; SSPs Jammu, Samba. The matter was directed to be listed on 26th December 2017.

82. Further directions were made on 30th January 2018.

These authorities have remained unmoved. The matter of demarcation and securing the lands has not moved a step.

Criminal culpability

83. On 17th December 2014, the court had noted the Status Report filed by the Vigilance authorities disclosing registration of 6 FIRs i.e. FIR Nos.15/2014, 16/2014, 17/2014, 18/2014, 19/2014 and 20/2014 registered by Police Station VOJ which were pending for launching of prosecution with the Vigilance Commission under Rule 24(1) of the Jammu and Kashmir State Vigilance Commission Rules 2013 regarding which report had been sent to Chief Vigilance Commissioner in accordance with Vigilance Commission Rules.

84. Mr. S. S. Ahmed, counsel for the petitioner had pointed FIRs had been registered only in 6 cases. Further status report was called for.

85. The matter remained pending on the several dates thereafter.

86. Mr. S. S. Ahmed had drawn our attention to the Report dated 01st April 2019 (Page-985) filed by the Anti Corruption Bureau (earlier Vigilance Organization) which refers to 17 cases only in which 7 FIRs had been registered by the Police Station Vigilance Organization Jammu (now Anti Corruption Bureau, Jammu) and 10 FIRs registered by the Vigilance Organization Srinagar (now Anti

Corruption Bureau, Srinagar). When compared against the extent of the illegal occupation and encroachment of State land, that only 17 cases were examined and merely 7 and 10 FIRs registered in Jammu and Srinagar respectively by the Vigilance Organisation shows the complicity in the misappropriation of State property, of those enjoined to bring the culprits to book and also of those required to protect State land and to effect facilitate recovery of public property.

87. The petitioner pointed out that **FIR No. 06/2014** was registered by the Vigilance Organization in respect of vesting of the land in favour of Sh. Bansi Lal Gupta and the investigation implicated the several high level officers. According to the petitioner, the sanction for prosecution was not only declined, but, on **4th July 2019**, the **Anti Corruption Bureau** filed a **closure report** in the **Court of learned Special Judge (Anti Corruption) Jammu**.

88. The petitioner has made the following averments in **CM No. 1972/2020** with regard to this closure report:

"21. That in the aforementioned final report the Anti-Corruption Bureau itself admitted that there was, 'Police-Bureaucratic Political-Business-Media nexus' for adopting the attitude of 'Shut-Eye' by Revenue Department in respect of Khasra No.781. The ACB further stated, 'a piece of state land where two police pickets had been constructed (which fact was acknowledged by the then DC Jammu and referred to by the then SSP Jammu in his communication) has now been converted into Jammu Plaza and JK Resort (illegal banquet halls) while as residential houses of bigwigs have been found constructed (such as Sh. Raman Bhalla, Sh. Subash Choudhary (benami), Sh. Om Parkash, Ex-MLA, Sh. Choudhary, retired SP, Sh. Mirza Dy.SP, Mohan Meakin, Anchor Firm and so on.

x x x

23. That in the closure report, the **ACB virtually exhibited its helplessness to proceed against the 'Big Sharks'** and despite unearthing the crime, preferred to adopt a silence as the accused involved were highly influential and enjoying clout in the corridors of power.

24. That before proceeding further, it is relevant to place on record a copy of communication No.JDA/DLM/HQA/181-89 dated 01-06-2011 wherein the then VC JDA wrote a communication to the then Deputy Commissioner, Jammu wherein the VC JDA categorically mentioned that land under Khasra No.781 measuring 154 Kanals 05 Marlas in Village Deeli, Jammu stands transferred to JDA since 2004 vide SRO 263 dated 09-08-2004 and entries of JDA have been recorded in the Khasra Girdawari Register indicating the JDA land. It was further pointed out in the said communication, that inspite of this, some non-occupants, vested interests are processing the files under the Roshini Act for regularization of JDA land and the VC JDA finally requested the Deputy Commissioner, Jammu that no case be considered in the above mentioned Khasra Number and if any regularization case of an individual is in process, the same may be cancelled/withdrawn. A copy of this communication was also forwarded to the Divisional Commissioner, Jammu. A copy of the said communication dated 01-06-2011 is enclosed herewith as ANNEXURE-XV.

x x x x

26. That it was on 04-12-2019 the Learned Special Judge (Anti Corruption), Jammu in a significant order rejected the closure report and the operative part of the said order reads as under: -

"For what has been observed hereinabove, this final report is ordered to be returned to the SSP, ACB Jammu with directions to further investigate in light of the observations made herein above and also to widen the scope of investigation for including within its ambit all encroachments by anybody and everybody whosoever unfazed by their status or position. The role of the officers/officials of the JDA be also looked into for their

deliberate acts of omissions and commissions to take charge of the land immediately after it was ordered to be transferred to JDA by the government and taking further steps to protect and preserve the same from the on-slot of encroachers and land sharks and also to recommend appropriate action against those who have already raised constructions of residential and commercial nature over the land encroached for reclaiming/recovering the costs thereof by imposing exemplary penalties. Given the delay that has already occurred, it is expected that the process is completed at the earliest without further loss of time so that the whole exercise does not become a casualty during the process itself.

A copy of the said order dated 04-12-2019 is enclosed herewith and marked as ANNEXURE-XVII.

27. *That while returning the closure report the Special Judge (Anti Corruption) Jammu in paras 19 and 20 of the order categorically observed that it was very well known to the officers/officials that no entry of being in occupation of land in question existed in the revenue records favouring the beneficiary which was a pre-condition for entertaining the claim for regularization. No Aks Tatima of the land in question was prepared which was another basic requirement and the possession on spot was to be verified there-from only. The Deputy Commissioner not only accepted the reports but also noted unequivocally that tatima-shajra was attached to the application and the price-determination committee headed by the Divisional Commissioner ignored all these illegalities and went on to determine the price straightway in an arbitrary manner without assigning any reason as to how they had arrived at and found the rate of the land in question to be just and reasonable and the Learned Special Judge (Anti Corruption) Jammu further made the following observations in para 20 of the order dated 04-12-2019: -*

“20. It is thus, clear from the above noted acts of omissions and commissions of these officers/officials that all of them acted in unison for bestowing the land in question to the beneficiary as largesse. These state of affairs, clearly demonstrate that abuse of the official positions by these officers/officials for favouring the beneficiary is writ at large. It is baffling to notice that such being the factual position how a clean chit was given to the then Divisional Commissioner Mr. Sudhanshu Pandey and Assistant Commissioner Mr. Rajinder Singh by the erstwhile Vigilance Organization (now ACB). It is equally disturbing that sanction for the prosecution of two more i.e. Hardeh Kumar Singh, the then Deputy Commissioner and Anwar Sadotra, the then Patwari was denied in an open bid to save them that too by the authority which was not competent to do so on flimsy grounds as if all these officers/officials were kids having no understanding of what was natural fallout of their actions. Therefore, this final report for closure of the case cannot be accepted being against the facts and circumstances established during the course of the investigation.”

(Emphasis supplied)

89. By our order dated 18th March 2020 we had called upon the official respondents to inform this Court about the cases which were registered by the ACB and the action taken thereon.

90. On 28th July 2020 a Status Report (page 1105 to 1165) has been filed by Mr. Raman Sharma, Additional AG on behalf of Anti Corruption Bureau giving the following status:-

- | | | | |
|-----|---------------------------------------|---|----|
| i) | Total number of FIRs registered by it | - | 17 |
| ii) | Cases in which charge sheet filed | - | 2 |

(FIR NO. 34/2014 and 30/2015)

iii) Cases closed	-	2
iv) Cases pending for receipt of sanction for prosecution-		3
v) Investigation stayed by court	-	1

91. Mr. Raman Sharma, AAG has pointed out that the investigation into FIR No.16/2014 could not proceed because of an order of stay dated 18th February 2016 passed by the learned Single Judge of this court in the case 561-A Cr.PC No.76/2016, Ashok Kumar v. State of J&K.

92. We had observed that these cases related to 2014 and 2015 and investigation was still stated to be either pending or cases pending for sanction of prosecution. In our order dated 11th August 2020 this Court had called upon the respondents to disclose the manner as to how the matter of request by the ACB or sanction for prosecution has been processed.

93. A report has been filed by the GAD dated 9th September 2020 informing this court with regard to the pending requests for prosecution as follows:

- i) With regard to FIR 18/2014, the ACB has made a request for prosecution by letter dated 15th November 2018;
- ii) With regard to FIR 19/2014 a request for prosecution was made to ACB as back as on 8th January 2016.

The protection being accorded to law breakers is established from the fact that requests for sanction to prosecute made in 2016 and 2018 have not been processed till date.

The Disparate working of the Roshni Act between Jammu and Kashmir Provinces

94. One extremely shocking fact is revealed from the information which was disclosed by the respondents and has been recorded in the order dated 4th September 2013. This court has noted the disclosure by the respondents of the district-wise area of the State land which were under illegal occupation of the land mafia and other encroachers in the State and the extent of the land which has been regularized under the Roshni Act.

95. A perusal of the information disclosed would show that though the extent of State land which was under illegal occupation of persons in districts in the Kashmir province runs into thousands and thousands of kanals (for instance, to the extent of 114135 kanals in District Baramulla), however the extent of land which has been regularized under the Roshni Act is proportionately of a very small area. The disclosure in respect of Jammu is to the contrary.

96. It is necessary to undertake a comparison of the information revealed by the respondents province wise which we tabulate hereafter:

Kashmir Province

<i>S.No.</i>	<i>District</i>	<i>State Land under Occupation (in Kanals)</i>	<i>Land regularized under Roshni Act (in Kanals)</i>
<i>1.</i>	<i>Anantnag</i>	<i>33710</i>	<i>4324</i>
<i>2.</i>	<i>Bandipora</i>	<i>46920</i>	<i>11002</i>
<i>3.</i>	<i>Baramulla</i>	<i>114135</i>	<i>4200</i>
<i>4.</i>	<i>Budgam</i>	<i>43742</i>	<i>3321</i>
<i>5.</i>	<i>Ganderbal</i>	<i>24544</i>	<i>809</i>
<i>6.</i>	<i>Kulgam</i>	<i>29114</i>	<i>941</i>
<i>7.</i>	<i>Kupwara</i>	<i>54034</i>	<i>3139</i>

8.	<i>Pulwama</i>	<i>40620</i>	<i>3311</i>
9.	<i>Shopian</i>	<i>13180</i>	<i>1849</i>
10.	<i>Srinagar</i>	<i>44294</i>	<i>496</i>

Jammu Province

<i>S.No.</i>	<i>District</i>	<i>State Land under Occupation (in Kanals)</i>	<i>Land regularized under Roshni Act (in Kanals)</i>
1.	<i>Doda</i>	<i>177551</i>	<i>54212</i>
2.	<i>Jammu</i>	<i>160358</i>	<i>44915</i>
3.	<i>Kathua</i>	<i>104746</i>	<i>26292</i>
4.	<i>Kishtwar</i>	<i>75159</i>	<i>18185</i>
5.	<i>Poonch</i>	<i>129717</i>	<i>6597</i>
6.	<i>Rajouri</i>	<i>396018</i>	<i>283444</i>
7.	<i>Ramban</i>	<i>167521</i>	<i>24993</i>
8.	<i>Reasi</i>	<i>141524</i>	<i>13380</i>
9.	<i>Samba</i>	<i>97133</i>	<i>8585</i>
10.	<i>Udhampur</i>	<i>152416</i>	<i>90607</i>

97. The respondents do not disclose as to whether any attempts have been made to retrieve the State land from the encroachers or whether the above disparity is because greater efforts have been made and state land taken back from encroachers in Kashmir than in Jammu. The respondents certainly do not contend that any State land has been retrieved from encroachment.

98. Given the manner in which the respondents have encouraged encroachment, we have no manner of doubt that the encroachers are happily continuing in illegal occupation of valuable State land, with the encouragement and patronage of those tasked with the duty of protection of public property and security of public interest.

99. The respondents have also concealed from this Court the important aspect of the details of State land which continues to be in illegal occupation of

encroachers in both Kashmir and Jammu provinces as well as the identity of the persons who are continuing with this occupation.

100. Mr. S. S. Ahmed has drawn our attention to the submissions in para 2 (iii) of the report dated 28th July 2020 filed by the ACB wherein the following disclosure is made:

*“2(iii) FIR No. 15/2014 stands registered in P/S VOJ u/s 5(2) P/ C/ Act Svt. 006 r/w 120-B, RPC and section 17 of J&K State Land (Vesting of Ownership Rights to the Occupants) Act, 2002. The investigation of the case was earlier **concluded as proved** and case referred to GAD for accord sanction. However, **GAD has denied sanction for prosecution** with respect to Shri Hirdesh Kumar Singh (IAS) then DC, Jammu vide order No. 18-GAD(Vig) of 2016 dated 27-06-2016 and accorded sanction in respect of Subash Singh Chib, then Naib Tehsildar Nagrota & Sadiq Ahmad, then Patwari Katal Batal, Nagrota vide above quoted order. Accordingly, the case was charge sheeted against rest of the accused persons, but the case was returned back by Hon'ble Court of Special Judge Anti-Corruption, Jammu vide order dated 12-07-2017 for further investigation. In compliance to court order further investigation was carried out and matter has been again referred to GAD for some clarification vide this office communication dated 29-04-2020, after receiving of which the charge sheet in the instant matter will be produced before the Hon'ble Court of Competent Jurisdiction.*

*The details /status of the above mentioned cases in tabular form is enclosed as **Annexure-B**. In compliance to the Court directions date 18-03 2020, the matter regarding cases pending for prosecution sanction has been taken up with GAD vide communication dated 16-06-2020 with the request to expedite the process of accord of sanction for launching prosecution against accused persons in those cases.”*

CM Nos. 4036/2020 and 4065/2020:

101. We may note the facts which have been brought on record in IA No. 4036/2020 which has been filed by Mr. Sheikh Faraz Ibqal, Advocate on behalf of applicant Mohammad. Majnoon Mir on 10th August 2020 and CM No. 4065/2020 filed by Ms. Meenakshi Salathia, Advocate also on 10th August 2020, on behalf of applicants Shiekh Mohammad Ayub, Farooq Ahmed Renzu, Ali Mohd Malik, Ghulam Nabi Ganaie and Assadullah Baba seeking impleadment as a party respondent in PIL No.19/2011.

102. The applicant in CM No. 4036/2020 has submitted that he has been maliciously implicated in FIR No. 19/2014, VOK.

103. It is pointed out that Vigilance Organization Kashmir (Now Anti Corruption Bureau, Kashmir) was required to investigate into FIR No. 19/2014 with regard to information regarding misuse of positions by officials of Revenue Department in conferring Land rights over 40 kanals 10 marlas of land in Khasra No.540 min located in Village Karewa/Damodar, District Budgam. The second allegation raised is that by the working of the Roshni Act the land was vested at a far lower rate than the market rate prevalent in the year 2007-2008.

The applicant has stated that instead of investigating into this matter, the VOK diverted its enquiry dishonestly into occupancy of 4 kanals of land located in Khasra Nos. 896 min and 656 min without any inquiry/ investigation into 40 kanals 10 marlas of land falling in Khasra No.540 min.

104. Ms. Meenakshi Salathia, Id. Counsel for the applicants in CM No. 4065/2020 has submitted that aggrieved by the manner in which the investigation was being diverted by the VOK, the applicants (in CM No. 4065/2020) were

compelled to file **OWP No. 1810/2014, 'Firdous Sultan and others v. State of J&K and others'**, wherein an order dated 24th March 2015 was passed directing VOK to look into the documents (revenue documents) which had been forwarded by the petitioners.

105. The submission is that the result of the fresh enquiry conducted was in favour of the applicant.

106. The applicant (in IA 4036/20) also claims to have relinquished his possession over the land to the State as back as in the year 2008.

The grievance of the applicant is that all these facts have been dishonestly concealed by the VOK and the applicant is being maliciously implicated in FIR No. 19/2014.

107. We are of the view that if the submission of the applicant is correct, the VOK has shielded those guilty of the dishonest vesting of ownership rights in the aforesaid 40 kanals and 10 marlas of land and have committed punishable criminal offences.

108. Such action in wrongful implication and the diverting of the inquiry/ investigation by itself is penal and additionally must also be treated as abetment in the offences. This has to render the concerned officials of the VOK culpable of serious offences in the matter.

Whether prayer for CBI inquiry permissible

109. The above narration shows that the entire matter reeks of inaction of as well as collusion with the culprits of the local the investigating authorities as well as the respondents. Apprehensions before us stand expressed by Prof. S. K. Bhalla, a

senior academician, and Mr Ankush Sharma, a senior lawyer, a collusion of the concerned authorities with law breakers. We have prima facie found adequate material to support their apprehensions.

110. We have noted above that, while by and large, the respondents have refused to abide by the law or to discharge their lawful obligations and statutory duties, even in the cases where they have intervened and registered cases it is apparent that if the matters were permitted to continue in the same manner, the end of the inquiries and investigation would not culminate in a fair or just outcome.

111. Shocking Rules stand published and implemented even without the approval of the legislature pointing towards the involvement at the top. We have prima facie found culpability of Government officials at the highest level enabling encroachment of public lands and permitting their illegal vesting in the hands of private owners. Their culpability has to be investigated.

112. In some of the cases, it has been contended that charge sheet stands filed. So, is it permissible for this court to direct inquiry and investigation by an independent agency which would certainly lend credibility to the investigation?

113. This issue is not *res integra*. The Supreme Court has repeatedly held that in an appropriate case, the court is empowered to handover investigation to the CBI even when the charge sheet has been submitted.

114. In the instant case there are allegations of Ministers, legislators, bureaucrats, high ranking Government and police officials having encroached upon public lands and having caused orders passed under the Roshni Act in their favour.

115. In this regard, we may usefully refer to the pronouncement of the Supreme Court reported at (2011) 13 SCC 337 *Disha v. State of Gujarat* in this

regard. In this case, the Supreme Court considered the judicial precedents reported at *(1996) 2 SCC 199 Vineet Narain v. Union of India*; *(1998) 8 SCC 661 Union of India v. Sushil Kumar Modi*; *(2006) 6 SCC 613 Rajiv Ranjan Singh 'Lalan' (8) v. Union of India*; *(2010) 2 SCC 200 Rubabbuddin Sheikh v. State of Gujarat*; *(2011) 3 SCC 758 Ashok Kumar Todi v. Kishwar Jahan*, and held as follows:

“the court can transfer the matter to the CBI or any other special agency only when it is satisfied that the accused is a very powerful and influential person or the State Authorities like high police officials are involved in the offence and the investigation has not been proceeded with in proper direction or the investigation had been conducted in a biased manner. In such a case, in order to do complete justice and having belief that it would lend credibility to the final outcome of the investigation, such directions may be issued.”

(Emphasis by us)

116. Premised on the above observations, in para 75 the judgment of the Supreme Court reported at *(2011) 14 SCC 770 State of Punjab v. Davinder Pal Singh Bhullar & Or.*, the Supreme Court has held as follows:

“Thus, in view of the above, it is evident that a constitutional court can direct the CBI to investigate into the case provided the court after examining the allegations in the complaint reaches a conclusion that the complainant could make out prima facie, a case against the accused. However, the person against whom the investigation is sought, is to be impleaded as a party and must be given a reasonable opportunity of being heard. CBI cannot be directed to have a roving inquiry as to whether a person was involved in the alleged unlawful activities. The court can direct CBI investigation only in exceptional circumstances where the court is of the view that the accusation is against a person

who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant, and it is necessary so to do in order to do complete justice and make the investigation credible.”

(Emphasis supplied)

117. In the judgment of the Supreme Court reported at **(2010) 2 SCC 200** ***Rubabbuddin Sheikh v. State of Gujarat and others***, investigation was conducted into the killing of a person who was alleged to have been killed by Gujarat Police. The investigation stood conducted by the Gujarat Police and even a charge sheet had been submitted. However, the writ petitioner apprehended that the investigation was not fair and impartial because high officials of the Gujarat Police were involved in the case. The writ petition praying for transfer of the case to CBI was filed at this stage. The Supreme Court, firstly, considered the issue as to whether investigation could be transferred to CBI after filing of the charge sheet and trial was going on and, secondly, whether facts and circumstances of the case warranted transfer of the case. On a consideration of the matter, the Supreme Court while considering several precedences, held as follows:

52. *In R.S.Sodhi vs. State of U.P. (AIR 1994 SC 38) on which reliance was placed by the learned senior counsel appearing for the writ petitioner, this Court observed (SCC pp.144-45, para2):*

"2.....We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However, faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we

having thought it both advisable and desirable as well as in the interest of justice, to entrust the investigation to the Central Bureau of Investigation....."

(emphasis supplied)

This decision clearly helps the writ petitioner for handing over the investigation to the CBI Authorities or any other independent agency.

53. It is an admitted position in the present case that the accusations are directed against the local police personnel in which High Police officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, we feel that all concerned including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would be fit and proper that the writ petitioner and the relatives of the deceased should be assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility, however, faithfully the local police may carry out the investigation, particularly when the gross allegations have been made against the high police officials of the State of Gujarat and for which some high police officials have already been taken into custody.

It is also well known that when police officials of the State were involved in the crime and in fact they are investigating the case, it would be proper and interest of justice would be better served if the investigation is directed to be carried out by the CBI Authorities, in that case CBI authorities would be an appropriate authority to investigate the case.

In Ramesh Kumari vs. State (NCT Delhi) & Ors. [2006 (2) SCC 677], this Court at Paragraph 8 observed @SCC p.681)

".....We are also of the view that since there is allegation against the police personnel, the interest of justice would be better served if the case is registered and investigated by an independent agency like CBI."

(emphasis supplied)

56. In Kashmeri Devi vs. Delhi Administration, (supra), this court held that in a case where the police had not acted fairly and in fact acted in partisan manner to shield real culprits, it would be proper and interest of justice will be served if such investigation is handed over to the CBI authorities or an independent agency for proper investigation of the

case. In this case, taking into consideration the grave allegations made against the high police officials of the State in respect of which some of them have already been in custody, we feel it proper and appropriate and in the interest of justice even at this stage, that is, when the charge sheet has already been submitted, the investigation shall be transferred to the CBI Authorities for proper and thorough investigation of the case.

57. In *Kashmeri Devi (supra)*, this Court also observed as follows : -

"7. Since according to the respondent charge-sheet has already been submitted to the Magistrate we direct the trial court before whom the charge sheet has been submitted to exercise his powers under Section 173(8) Cr. P.C. to direct the Central Bureau of Investigation for proper and thorough investigation of the case. On issue of such direction the Central Bureau of Investigation will investigate the case in an independent and objective manner and it will further submit additional charge sheet, if any, in accordance with law."

58. In *Gudalure M.J.Cherian (supra)*, in that case also the charge sheet was submitted but in spite of that, in view of the peculiar facts of that case, the investigation was transferred from the file of the Sessions Judge, Moradabad to Sessions Judge, Delhi. In spite of such fact that the charge sheet was filed in that case, this Court directed the CBI to hold further investigation in spite of the offences committed. In this case at Page 400 this court observed: (para 7)

"7.....The investigation having been completed by the police and the charge sheet submitted to the court, it is not for this court ordinarily to reopen the investigation specially by entrusting the same to a specialized agency like CBI. We are also conscious that of late the demand for CBI investigation even in police cases is on the increase. Nevertheless - in a given situation, to do justice between the parties and to instill confidence in the public mind - it may become necessary to ask the CBI to investigate a crime. It only shows the efficiency and the independence of the agency."

59. In this connection, we may reiterate the decision of this Court in the case of *P & H High Court Bar Association (supra)* strongly relied on by the learned senior counsel appearing for the writ petitioner. A reference of the paragraph of the said decision on which reliance could be placed has already been made in **Para No.32** from which it would be evident that in order to do complete justice in the matter and to instill

confidence in the public mind, this court felt it necessary to have investigations through the specialized agency like the CBI.

60. *Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr.Rohatgi learned senior counsel appearing for the state of Gujarat that after the charge sheet is submitted in Court in the criminal proceeding it was not open for this court or even for the High Court to direct investigation of the case to be handed over to the CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.”*

(Emphasis supplied)

118. Given the nature of the crimes, the status of those who are involved including the allegations of involvement of Ministers, legislators, bureaucrats, Government officials as well as the local police officials of Union Territory of Jammu and Kashmir, it is essential to do complete justice in the matter and to ensure confidence in the minds of the public that, in order to enable a fair, proper and complete investigation, the CBI should be requested to take up and proceed in the matter in accordance with law.

Conclusions

- i. The *Jammu and Kashmir State Land (Vesting of Ownership to the Occupants) Act, 2001* as amended from time to time is completely unconstitutional, contrary to law and unsustainable. The legislation adversely impacts rights guaranteed to the people under Article 14 & 21 of the Constitution of India, was void ab initio from its very inception and there

could be no legal divesting of the lands from the ownership of the State and vesting the same with the occupants thereunder. As a result, the statement in Section 4 of the *Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) (Repeal and Savings) Act, 2018*, that the Act does not effect anything already done under the Roshni Act is meaningless and of no assistance to the beneficiaries. All acts done under the Act of 2001 or amendments thereunder are unconstitutional and void ab initio. Section 6 of the General Clauses Act, 1897, would also not aid the beneficiaries therefore.

- ii. The *Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Rules, 2007* are not in consonance with the statutory provisions. For instance, amongst others, Rule 13(IV) permits vesting of agricultural land free of cost; Rule 16 provides for rewards, rebates and incentives; Clause (a) to the fifth proviso in Rule 13 enables change of use of even agricultural and forest lands to commercial usage all of which are contrary to the statutory provisions, completely impermissible and illegal. As such these Rules are ultra vires the parent enactment.
- iii. The Roshni Rules of 2007 apparently stand published without the approval of the legislature and clearly could not have been implemented. All orders passed and action taken premised on the Rules of 2007 are therefore completely illegal and void ab-initio.

- iv. The acts and omissions of officials and the encroachers/ occupants tantamount to serious criminal offences, necessitating inquiry, investigation and criminal prosecutions.
- v. The working of the Roshni Act, 2001, was effected completely arbitrarily, dishonestly and illegally. There exist glaring instances of State lands being illegally vested by under valuation of the land. In a large number of cases, the State lands stand vested without payment of any amount which is completely illegal and void. Instances of vesting of prohibited encroachments (for instance, those on forest lands or of lands reflected as State lands in the revenue records) abound.
- vi. The large tracts of State lands vested under the Roshni Act, 2001 and those under encroachment must be retrieved in accordance with law.
- vii. The above extract of court proceedings shows the contumacious, dishonest and penal acts of the respondents manifested from the reluctance to place the records before this Court and the Vigilance authorities; the absolute refusal to retrieve encroached State lands, take action against the encroachers or to effect the demarcations despite repeated Court orders since 2011.
- viii. The official machinery has actively connived with encroachers of State lands for obvious reasons and considerations. There is substance in the assertions of the petitioner and the applicants that persons in position, power and those with financial resources including bureaucrats, Government officials, minister, legislators, police personnel, business persons etc., have influenced

the completely illegal vesting of State lands. Clearly the conduct of those heading the Jammu Development Authority, the Revenue department and all those responsible for the protection of the State lands as well as the working of the Roshni Act for all these years deserves to be inquired/ investigated into. Responsibility has to be fixed and the wrong doers punished.

- ix. Not only have encroachments been permitted but the encroachers have been given sanction of building plans and permissions for commercial use thereof. This ipso facto establishes the complicity of the Municipal Corporations and licencing authorities with the encroachers.
- x. The manner in which the official respondents have proceeded with regard to serious matter of encroachments of the State lands; its illegal vesting to the encroachers; permissions to raise construction; grant of licences thereon and such lands put to commercial usage, requires immediate inquiry and determination of culpability of those involved in, as well as, of those who have permitted such transactions. Appropriate criminal action in accordance with law for the same is required to be undertaken against those found culpable.
- xi. The erstwhile Vigilance Organization has merely undertaken a cosmetic exercise which too points towards shielding persons in authority as well as those responsible for the illegalities. The magnitude of the scam, the closure Report dated April, 2019 filed by the ACB and the GAD on 9th September 2020 clearly show that neither the Anti Corruption Bureau nor the official

respondents have the capacity, ability or the will to take appropriate legal action for securing the interests of the State or taking effective actions against those who have usurped the public land with impunity in the erstwhile State of Jammu and Kashmir or retrieving the lands from those who continue to illegally occupy the State lands in the Union Territory of Jammu & Kashmir.

- xii. The apprehensions of the petitioner in PIL No.19/2011 and the applicant in CM No. 48/2014 that a cover up of the encroachments and illegal vestings by public officials and authorities is underway, are well founded and no honest enquiry or investigation by the local agencies is possible.
- xiii. The required enquiry deserves to be scientifically proceeded with and closely monitored.
- xiv. By illegal working of the Government functionaries, out of the actual transfer of around 3,48,200 kanals of land under the Roshni Act, the major portion of over 3,40,100 kanals has been transferred free of cost as agricultural land.
- xv. The three instances placed before us by the petitioner narrated as Serial Nos. A, B, C are only noted as illustrations. An in depth inquiry of all transfers effected by the working of the ***Roshni Act, 2001***(and amendments thereto), ***Roshni Rules, 2007*** and continuing encroachments of the public lands is absolutely imperative in public interest.
- xvi. The damage by the illegal acts and omissions in the present case cannot be termed as mere loss to public interest but has to be treated as a shameless

sacrilege and damage to national interest. The guilty need to be forthwith identified and proceeded against in accordance with law.

xvii. The present case, therefore, is a fit case for enquiry by the Central Bureau of Investigation which is required to go into all aspects of the matter.

Result

119. In view of the above, we direct as follows:

(I) The Commissioner/ Secretary to Government Revenue Department, shall ensure that following information regarding district wise State lands as on 1st January, 2001, are compiled and posted on the official website as well as the NIC website:

- (i) The details of the State land which was in illegal and unauthorized occupation of person(s)/ entities with full identity of encroachers and particulars of the land.
- (ii) The details of:
 - (a) the applications received under the Roshni Act, 2001;
 - (b) the valuation of the land;
 - (c) the amounts paid by the beneficiary;
 - (d) the orders passed under the Roshni Act; and
 - (e) the persons in whose favour the vesting was done and also further transfers, if any, recognized and accepted by the authorities.
- (iii) Complete identities of all influential persons (including ministers, legislators, bureaucrats, government officials, police officers,

businessmen etc.) their relatives or persons holding benami for them, who have derived benefit under the Roshni Act, 2001/ Roshni Rules 2007 and/or occupy State lands.

(II) The Divisional Commissioners, Jammu as well as Kashmir, shall place on record district-wise full details of the encroached State land not covered by the Roshni Act, Rules, Scheme(s), order(s) which continues to be under illegal occupation; the full identity and particulars of the land and person(s)/entities encroaching the same. The Revenue Secretary shall ensure that this information is also posted on the website of the respondents within four weeks.

(III) The Secretary Revenue, Govt. of the Union Territory of Jammu and Kashmir shall furnish the above information with copies of the supporting records to the CBI in the digitized format, and, if requested, hard copies thereof be also provided, within four weeks. The same shall be filed on court record as well.

(IV) Translation of records, wheresoever required, shall be expeditiously ensured by the concerned Deputy Commissioner from the Tehsildars and provided to CBI within one week of the need being noticed/informed.

(V) In case, the above directions are not complied with, the Secretary Revenue and the Divisional Commissioners of Jammu and Kashmir shall be held liable and proceeded against for Contempt of Court.

(VI) The present order be placed before the Director, CBI, who shall appoint teams of officers not below the ranks of Superintendents of Police assisted by other officers to conduct an in depth inquiry in the matters which are the subject matter of

this order. On conclusion of the inquiry, the CBI shall register case(s) in accordance with law against the person(s) found culpable, proceed with the investigation(s) as well as prosecution(s) thereof.

(VII) The Anti Corruption Bureau shall place before the Director, CBI, the closure report in FIR 6/2014 filed on 4th July, 2019 before the Special Judge (Anti-Corruption Judge, Jammu) as well as a copy of the order dated 4th December, 2019 passed thereon by the Special Judge, Jammu.

(VIII) The Anti Corruption Bureau of the Union Territory of J&K shall place complete records of all matters regarding land encroachment/ Roshni Act or Rules being enquired into or cases investigated into by it, before the CBI which shall proceed with the further inquiries and investigations therein in accordance with law.

(IX) In all cases in which charge sheets stand filed by the Anti Corruption Bureau in the Courts, the CBI shall conduct further and thorough investigation, and, if necessary file additional charge sheets in those cases.

(X) In cases pending for accord of sanction for prosecution before the Anti Corruption Bureau or the Competent Authority, the records thereof shall be placed before the CBI for examination. These cases shall be thoroughly further examined investigated by the CBI and the matter for accord of sanction of prosecution against all persons found by the CBI as involved in the offences, shall be proceeded with, in accordance with law.

(XI) The CBI shall immediately inquire into the three instances at Serial Nos. A, B, C above (paragraph nos. 54 to 82); the matters pointed out in CMs 4036/2020, CM 4065/2020 and all instances of vesting under the Roshni Act and encroachment of State lands by influential persons as above in the details provided by the authorities and proceed further in these cases in accordance with law.

(XII) The CBI shall also inquire into the continued encroachments on State lands; illegal change of ownership/use; grant of licences on encroached State lands; misuse of the land in violation of the permitted user; raising of illegal constructions; failure of the authorities to take action for these illegalities; fix the responsibility and culpability of the persons who were at the helm of affairs, who were duty bound to and responsible for taking action; their failure to proceed in accordance with law against the illegalities and instead have permitted/ compounded the same, as also any other illegality which is revealed during the course of the enquiry wheresoever.

(XIII) The CBI shall specifically inquire into the matter of publication of the ***Roshni Rules, 2007*** without the assent of the legislature. If this is found true, the CBI shall identify the persons responsible who have illegally and dishonestly published the same and proceed in the matter for their criminal liability.

(XIV) The Principal Secretary, Revenue; Vice Chairman JDA and all other authorities from whom information is required by the CBI shall efficiently and expeditiously furnish all records and information to the CBI. Failure on the part of any Government authority to do so shall render them liable for appropriate departmental action apart from inviting criminal prosecution.

(XV) We grant liberty to the petitioner in PIL No.19/2011 and Ankur Sharma, the petitioner in PIL No.41/2014; the applicants in CM 4036/2020 and CM 4065/2020 to place all material in their power and possession before the Central Bureau of Investigation. If called upon to do so, they shall render full assistance to the CBI.

(XVI) The CBI shall file action taken reports every eight weeks in sealed cover before this court in this case.

(XVII) The Chief Secretary of the Government of the Union Territory of Jammu & Kashmir shall monitor the matter and ensure that the inquiry by CBI is not hampered in any manner on account of concealment of documents, records, requisite assistance or cooperation on the part of the official machinery.

(XVIII) Any effort to delay the enquiry by the CBI in any manner should be construed as active connivance by such person(s) with those whose culpability is being investigated.

(XIX) In view of the above directions, the presence of the applicants in IA Nos. 4036/2020 and 4065/2020 in the present proceedings is completely unnecessary and these applications are disposed of.

These applications are disposed of in the above terms.

(RAJESH BINDAL)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

Jammu
09.10.2020
Raj Kumar