Kuldeep Raj And Others vs State Of J&K And Others on 11 February, 2022

Author: Javed Iqbal Wani

Bench: Javed Iqbal Wani

Sr. No. 01

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on : 07.12.2021
Pronounced on : 11 .02.2022

OWP No. 644/2019
CM No. 3069/2019[1/2019]
CM No. 8180/2019

Kuldeep Raj and others

.... Petitioner(s)

Through:- Mr. G. S. Thakur, Advocate

v/s

State of J&K and others

..... Respondent(s)

Through:- Mr. S. S. Nanda, Sr. AAG

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

1. In the instant petition filed under Article 226 of the Constitution of India, the petitioners seek indulgence of this Court in granting them the following reliefs:-

"(a) Writ of Certiorari quashing Order No.DCK/LA/2018-

19/1280-81 dated 14.02.2019 passed by the respondent No. 2 by virtue of which the proprietary land of the petitioners has been declared as State land without paying any compensation to the petitioners and completing the acquisition proceedings as initiated pursuance to the under Section 4(1) No. 08 of 2018 dated 23.01.2018 issued vide No. DCK/ADCK/LA/2017-18/211-16 dated 23.01.2018.

(b) With further Writ of Mandamus commanding the respondents to pay compensation to the petitioners being the village land holders/owners in "Shamlat Deh" falling under Khasra No. 635/605/580 measuring 900 Kanals situated at Village Sahar, Tehsil and District Kathua.

(c) With further Writ of Mandamus commanding the respondent No. 4 to complete the acquisition proceedings and settle the compensation as per the market rate in favour of the petitioners."

2. The factual matrix of the instant petition as propounded by the petitioners is that they are village land holders/owners having their respective shares in Shamlat Deh land falling under Khasra No. 635/605/580 in Khewat No. 10, Khata No. 1/28 to 33 and Khata No. 1/34. The said land is stated to have been inherited by the petitioners from their ancestors as descendents of one, namely, Mst. Parro having succeeded by one Banku, being in cultivating possession of the land since 1979-80 B.K and after their death inherited by the petitioners being as successors.

3. It is being stated by the petitioners that while being in cultivating possessions of the land in question, respondent No. 3 issued Notification No. 08 of 2008 dated 23.01.2018 under Section 4(1) of the Jammu and Kashmir Land Acquisition Act, 1990 (for brevity 'the Act') notifying the said land falling under Khasra No. 635/605/580 min measuring 900 Kanals for public purposes i.e., for establishment of Industrial Estates at Village Sahar. In terms of the said notice, objections are stated to have been invited from the interested persons. It is being stated that the aforesaid notice issued under Section 4(1) of the Act, was not properly circulated as envisaged under Section 4 of the Act and that the respondents submitted the case to the Government for issuance of notification under Sections 6 and 7 of the Act and that the respondent No. 1 issued Notification No. 342-Rev (LAJ) of 2018 dated 27.7.2018, for declaration of intended acquisition to the effect that the land is required for public purposes viz for establishment of Industrial Estates by Industries and Commerce Department.

4. A Notice under Sections 9 and 9-A of the Act is stated to have been issued vide No. DCK/ADCK/LA/2018-19/165-72 dated 28.08.2018, by the Collector to all interested persons i.e., land owners and also representatives of the intending department for stating nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections, if any, with regard to the measurement of land conducted by the field staff of the Revenue Department and the amount of the tentative compensation.

5. It is being next stated that consequent to the issuance of the notification under Section 9 and 9-A of the Act, the rates in respect of the land proposed to be acquired by the respondents were negotiated and shares determined, however, in-between respondent No. 2 issued Order No. DCK/LA/2018-19/1280-81 dated 14.02.2019, (for brevity 'impugned order') in terms whereof the land of the petitioners came to be declared as the State land, without hearing them. It is further stated that at the time of preparation of record of rights during the year 1979-80 B.K, 5293 Kanals of land were existing on spot including the land covered under Khasra No. 580, with an area of 3613 Kanal and 01 Marla of land, and in support of this contention a copy of the record of rights is annexed with the instant petition, as 'Annexure-VI'.

6. It is being further stated by the petitioners that in 1984 B.K, the Revenue Department issued Alan No. 17 dated 27 Bhadoon, 1984, whereunder rules came to be framed for regulating mutation of Khalsa Waste as "Shamlat- Deh" in Jammu province, in connection with the standing Order Boon No.4 published in Government Gazette on 14th Phagan 1982 and that in pursuance to said Alan No. 17 read with Boon No. 4, the State land covered under Khasra No. 580 came to be converted into Shamlat Deh,Hasab-e-Rasad Khewat i.e., the owners became entitled to share in the said land on pro rata basis as per their proprietary land, therefore, on account of conversion of the said State land into Shamlat Deh, petitioners became entitled to compensation upon the acquisition of the same by the respondents.

7. It is being next stated that respondent No. 2 issued the impugned order dated 14.02.2019, wrongly stating that the status of the land in Khasra No. 580 has been changed from State land to Shamlat Deh without any Government Order or mutation order passed by a Competent Revenue Officer, and that the impugned order passed by respondent No. 2 is without jurisdiction, mandate of law and has been issued without giving an opportunity of being heard to the petitioners. It is being next stated that in the year 1979 A.D, out of 900 Kanals of said land, a portion thereof was acquired for construction of 'Ravi Canal' in Village Sahar, Tehsil and District Kathua and compensation thereof was paid to the land holders being similarly situated with the petitioners, as such, the respondents could not contend the land in question to be a State land now. It is being further stated that in order to avoid payment of compensation to the petitioners qua the land acquired by the respondents, the respondent Nos. 2 and 3 handed over the possession of the land in question including the land held by the petitioners to respondent Nos. 4 and 5 without paying any compensation thereof to the petitioners, upon issuance of communication No. DCK/ADCK/LA/2018- 19/88-90 dated 13.11.2018, forming 'Annexure IX' to the petition.

8. The petitioners in the instant petition have urged following grounds while maintaining the same:-

> "i) Because the order impugned is against the law and facts as the title of land has been changed from state land to Shamlat Deh in the light of Boon No. 4 published in the Govt. Gazette dated 14th Phagan 1982 and Revenue Department Alan No. 17 dated 27 Bhadoon, 1984, vide mutation No. 63 of the said village. The respondent No. 2 has committed error by wrongly mentioning in the impugned order that the status of land has been changed from State to Shamlat Deh without any Govt. Order or mutation order.

There is no Govt. order to set aside the said Boon No. 4 and the Alan 17, till the said Boon No. 4 is set aside by legislative Act and Alan 17 is also rescinded by the Govt. by passing a new order, the status of land of petitioners cannot be changed. Similarly the order passed on mutation No. 63 cannot be set aside by the respondent no. 2 as he has no jurisdiction to do so but he has deliberately concealed the factum of attestation of said mutation in the light of said Alan no. 17 to set aside the ownership rights of petitioners arbitrarily by acting as monarch in the state, set aside the ownership rights of the petitioners over the land and escheated the same to the State. Moreover, the respondent No. 2 has no jurisdiction for correction of any revenue entry of Jamabandi/Record of Rights without a declaratory suit filed within limitation period as per Section 32 of the Land

Revenue Act. Thus, the order impugned is bad and liable to be set aside. It is the settled law as held by the Hon ble Supreme Court as well as our own High Court in various judgments has held that even if the order is void-abinitio, it cannot be rescinded without hearing the parties in whose favour it has been issued. It is the settled law as envisaged under the Land Revenue Act, 1990 that no revenue entry or the record of right can be rectified/revised without hearing the parties being affected by the same, therefore, the order impugned is bad and liable to be quashed. As it appear the order impugned is neither judicial order nor administrative but only to absolve from the liability and dispossess the owners of the land from the proprietary land.

ii) Because the order impugned is violative of Article 31 of the Constitution of India which is not only fundamental right but fall in the realm of human right. As held by the Hon ble Supreme Court in a judgment titled "Tuka Ram Kana Joshi & Others vs. MIDC & Others, reported in AIR 2012 SCW 6343 the only exception carved out to take the possession of the land owned by the land owner is under the land Acquisition Act by paying compensation to the land owners. It is submitted that the State is a welfare state which is governed by the rule of law, cannot arrogate itself to a status beyond one i.e., provided by the Constitution. Since the right of property continues to be fundamental right in the State of Jammu and Kashmir which cannot be taken away by the sweet will of an officer who do not intends to pay compensation to the land owners.

iii) Because the respondents who initiated the process under Land Acquisition Act, the notifications were issued rates were submitted and the respondent No. 2 sensing the fact that the State has to pay huge compensation to the land owners/petitioners passed the order impugned thereby depriving the petitioners to claim compensation by passing the order impugned, therefore, the inaction on the part of the respondent No. 2 is arbitrary, malafide and colourful exercise of powers.

iv) Because the action on the part of the respondents is otherwise against law. Since the State is a guardian of rights of its citizen and is governed under rule of law. The respondent has to act fairly giving due regard and respect to the rules framed by it and the action on the part of the respondents should not be like this which brings sense of insecurity amongst the common masses. Thus, the order impugned is bad and liable to be set-aside.

v) Because the impugned order is otherwise liable to be quashed in view of the fact that no opportunity of being heard was afforded to the petitioners before passing the order impugned as such is violative of principle of natural justice.

vi) Because the impugned action on the part of the respondents is violative of Article 14 and 31 of the Constitution of India. Since the possession of the land has been taken over and the petitioners became landless as already submitted earlier the land from the same Khasra number was acquired and compensation was paid but now the respondents have passed the order impugned in an arbitrary manner which is colourful exercise of power.

vii) Because the order impugned has been passed without any jurisdiction. The respondent no. 2 was not competent to pass the order impugned."

9. Per contra, respondents 1 to 3 have filed objections to the petition, whereas respondents 4 and 5 despite availing opportunities have not chosen to file any response.

10. The respondents 1 to 3 in their objections have resisted and controverted the contentions raised and grounds urged in the petition, inter alia, on the premise that the land covered under Khasra No. 635/605/580 total measuring 900 Kanals situated at Village Sahar, Tehsil and District Kathua was recorded as State land in the Bandobsti Record of 1979-1980 B.K belonging to the State and that in the year 2001-02 B.K the status of the said land was changed as Shamlat-Deh wrongly without recording any reasons or reference of any mutation or direction of any higher authorities. The aforesaid fact is stated to have emerged during the preparation of award in respect of land sought to be acquired under Khasra No. 580 measuring 2,613 Kanals 09 Marla and, accordingly, was brought into the notice of the Divisional Commissioner, Jammu by respondent No. 2- Deputy Commissioner, Kathua vide communication dated 14.02.2019, wherein a recommendation was made for transfer of 900 kanals of land to the Industries and Commerce Department, being State land.

11. It is being further contended in the objections that the land in question covered under Khasra No. 635/605/690 measuring 900 Kanals is not proprietary land of the petitioners, as the same belongs to the State as per the record of Bandobasti Misle-Haqiat 1979-80 B.K. The issuances of Alan No. 17 dated 27 Bhadoon 1984 is stated to be matter of record. It is further contended that in the Jamabandi of 2001-02 B.K no reference of any mutation or order of any authority is referred to warranting change of the record. The impugned order is contended to have been issued by respondent No. 2 with due application of mind and providing ample opportunity of being heard to the petitioners. It is denied in the objections that the petitioners are entitled to any compensation qua the land acquired as the same does not belong to them, but belongs to the State. Further, the impugned order issued by the respondent No. 2 is stated to be reasonable, rational and issued after keeping in view the record of the land. None of the rights of the petitioners are contended to have been violated by the respondents in the process.

Heard learned counsel for the parties and perused the record.

12. The genesis of the instant litigation is traceable to the issuance of the impugned order dated 14.02.2019 by respondent No. 2, where under it has been ordered that all the entries of the private persons including the petitioners herein made on the subject of the land are ordered to be deleted with immediate effect, holding the said land to be State land and the persons interested including the petitioners herein not entitled to any compensation thereof upon its acquisition by the Industries and Commerce Department for establishing of industrial estates.

13. At the outset it is noticed that claim of the petitioners qua the land in question which had come in acquisition proceedings detailed out in notice issued under Section 9 and 9-A of the Act, forming 'Annexure V' to the petition issued by the Collector Land Acquisition (Addl. Deputy Commissioner, Kathua) is recorded as Shamlat-Deh shown to be under the cultivation of the private individuals including the predecessor-in-interest of the petitioners/petitioners.

14. Thus, before proceeding further in the matter the background, nature and character of the Shamlat-Deh land needs to be traced and looked into. As per the Land Law in Jammu and Kashmir (Revenue Manual) authored by Justice H. Imtiyaz Hussain, in the process of evolution, when the village community system got transformed into the customary family system i.e., the land instead of being owned by the entire community, began to be owned by the families, certain portion of the land were still retained as community property for common use and this community property came to be known as village common land or Shamilat land [Paras Dewan,Customary law, 269 (1978).] As per Revenue Manual (supra) the village common land is not one consolidated chunk of land, but it consists of several chunks of land reserved for certain common purposes, as classified in the following land areas:-

> (a) Chaupal or hujra, which is used as a place of meeting by village flocks, a place where most of the social and cultural functions are held and where political meetings are arranged;
>
> (b) Shamilat deh, which is used for grazing of the cattle, a place from where the proprietors fetch wood and grass and like things, and which includes all the banjar land of the village;
>
> (c) Gora deh, where cattle, before going to pasturage gather and which area is reserved for the further extension of village dwellings; and
>
> (d) Abadi deh, the inhabited village sites including the land meant for dharamsalas, mosque, emples and gurdwaras, for burning ghats and graveyards, for tanks, wells and ponds, for streets and necessary lanes and by lanes.

Further as per the Manual (supra) as a general rule, only proprietor of the village (malikana-deh) as distinguished from the proprietors of their own holding (malikana-makbuza khud) are entitled to share in the Shamilat-Deh and the rights and incidents of Shamilat land in occupation of a person are the same, as if he is the owner thereof.

15. The proprietary rights over the Shamilat-Deh land of a villager had even been acknowledged, entertained and recognized by this Court from time to time. Reference in this regard to judgment of this Court passed in case titled as Salam Rather and others vs. Mohd. Ganai and others, reported in AIR 1964 J&K 46, would be appropriate and advantageous herein.

Even the question of payment of compensation to the land holders of Shamilat land has been recognized by a Division Bench of this Court in case titled as State of J&K vs. Smt. Hamida Begum and others, reported in AIR 1979 (J&K) 48, fundamentally, on this principle and premise that the rights and incidents of Shamilat land in occupation of a person are the same as if he is the owner thereof and the said legal position even has been followed by this Court in case titled as Union of India vs. Mst. Freeni Boga, reported in 2004 (II) S.L.J 776, wherein at para 31 following has been laid down:-

> "31. Following the view expressed by this Court in these authorities we hold that holder of Shamilat land (which in revenue parlance is known as Shamilat dafa 5) has got the same rights in respect of the land as in the proprietary land and if a portion of Shamilat land comes under acquisition, holder thereof is entitled to its compensation in the same manner as in the case of proprietary land. Argument of the learned counsel for the appellant on this court, therefore, cannot be accepted."

16. It would be profitable to mention here that on 25.02.1926 A.D, the Maharaja of the erstwhile State of Jammu and Kashmir issued Boon No. 4, published in Government Gazette on 14th Phagan 1982, (corresponding to February-March 1926 A.D) whereunder Khalsa /State land commonly known as Khalsa Sarkar was ordered to bestow upon village community and this land was henceforth ordered to be shown as Shamilat-Deh and the villagers concerned were awarded jointly the same rights therein, which they possess in their individual holdings. By the said Boon, it was ordered that the landholder in a particular village would be entitled to have a share in the land declared as Shamilat-Deh pro rata to their holdings meaning thereby that a villager shall have proprietary rights in the Shamilat land in proportion of the seize of his holding.

17. In furtherance, to Boon No. 4 (supra) Ailan No. 17 dated 27 Bhadon, 1984(corresponding to August-September 1927-28 A.D) came to be issued as rules to regulate mutation of Shamilat-Deh land in the Jammu province. The said Alan No. 17 was published in the Government Gazette on 13 Assuj, 1990 B.K (corresponding to September-October 1933-34 A.D) Clause 5 of the said rules, provided that Shamilat entries made under this rule shall be recorded in the form of Shamilat-malikan, Shamilat malguzaarn, Shamilat- murusian, according to the nature of rights of the villages and holders and the entries shall be made in the ownership or tenancy column of Jamabandi, according to the same methods as the land holder rights in their private holding are recorded.

It is pertinent to mention here that subsequent to Boon No. 4 (supra), a similar Alan being Alan No. 2 dated 20 th September, 1927 and notified on 16th Katik 1984 (corresponding to October-November 1927-28 A.D) cmae to be issued for Kashmir province as well with two kids of Shamilats there viz., Shamailat -Rule 4 and Shailat -Rule 5.

18. What comes to fore from the above is that the State land/Khasla land came to be converted by the Maharaja in terms of Boon No. 4 (supra) treating to be as common land/Shamilat land bestowing upon the land holders, the said Shamilat land to the extent a land holder has his own proprietary land in the village conferring upon him the rights and incidents of the said Shamilat Deh land as if he is the owner thereof, followed by Alan No. 17 (supra) framing rules there under for regulating mutation of the said Shamilat land in Jammu province.

19. Now reverting to the case in hand and the issues involved therein, admittedly, as per the record of rights in the form of Jamabandi and Girdhawari appended with the petition reveals that the land, i.e., subject matter of the writ petition is Shamilat Deh and predecessor-in-interest of the petitioners/ petitioners are recorded to be in possession of their respective portion/parcels of land covered under their respective survey numbers as cultivating tenants. The said revenue records are

of the year 2001-2002 B.K (corresponding to 1943-44, 1944- 45 A.D).

Further record tends to demonstrate that mutations also stand attested qua the said respective portion/ parcel of land in favour of the predecessor-in-interest of the petitioners/petitioners. Facts also remain that the said position has even been acknowledged and admitted by the Collector Land Acquisition/Addl. Deputy Commissioner, Kathua in the notice dated 28.08.2018, issued under Section 9 and 9-A of the Act, forming annexure V to the petition, wherein the particulars of the land in tabulated form reflect the nature of the land, name of the cultivator, Khasra numbers and areas. The respondents in their reply have neither disputed nor denied the contents of the said notice dated 28.08.2018 in their reply.

20. On the contrary, record reveals that the revenue records annexed with their objections and relied upon by the respondents in the shape of missal-i- haqqiqat „Jamabandi (Jamabandi) are of the year 1979-80 B.K. (corresponding to 1922-23, 1923-24 A.D). The said entries in respect of the said land in the records of rights seemingly have been changed upon issuance of Boon No. 4 dated 25.02.1926 A.D, i.e., after of the 1922-23, 1923-24 A.D and consequent mutations attested pursuant to Alan No. 17 (supra) which provided for rules to regulate mutations of the State waste land as Shamilat Deh in Jammu province. The entries made in the revenue records in favour of the predecessors-in-interest of the petitioners/petitioners, cannot be by any sense of imagination said to be illegal or effected by any incompetence authority.

21. The contention of the respondents that the land in question has been recorded as State land in the records in the year 1979-80 B.K (corresponding 1922-23, 1923-24 A.D) pales into insignificance as seemingly the entries have got changed after coming into being of Boon No. 4, (supra) in the year 1926 A.D i.e., after the aforesaid entry of 1922-23, 1923-24, relied upon by the respondents.

22. The predecessors-in-interest of the petitioners, thus, can safely said to have been recorded in the possession of their respective parcels of land pursuant to the Boon No. 4 (supra) indisputably by an order of the Maharaja published in the Govt. Gazette on 25.02.1926 A.D. A legally recognizing substantive right thus thereof has accrued in favour of the predecessor-in-interest of the petitioners/petitioners emanating from the said order (supra). The said substantive right even cannot said to have been depended upon the attestation of a mutation under Alan No. 17 (supra).

23. The defense set up by the respondents in opposition to the case set up by the petitioners in regard to above cannot said to be potent by any sense of imigination. Therefore, the petitioners are held to have been in cultivating possession of their respective portion/parcels of Shamilat Deh land validly and legally and could not have been divested of the same by the respondents upon taking recourse to acquisition proceedings in terms of Land Acquisition Act, without following the mandate of the Act and denying the petitioners compensation thereof to which they would be entitled thereto, more so, in view of an un-rebutted and an uncontroverted fact pleaded by the petitioners in the petition that similarly situated land holders adjacent to the land in question had been awarded compensation in the year 1978-79 by the respondents upon its acquisition by the respondents for construction of Rivi Canal. The respondents in this view of the matter have subjected the petitioners to grave hostile discrimination viz-a-viz the said land holders having infringed Article 14 of the

Constitution.

24. Law is no more res integra that right to property though used to be a fundamental right, now has been recognized as a constitutional right under Article 300-A of the Constitution of India, which provides that no one can be deprived of his property except by the authority of law. The aforesaid constitutional right has been acknowledged to be akin to a fundamental right and more importantly a basic human right. Thus, no one can be deprived of his property without following the procedure prescribed in law and payment of adequate compensation. A reference here to the judgment of the Apex Court passed in Kedar nath Yadav vs. State of West Bengal and others, reported in AIR 2016 SC 4156, would be advantageous and appropriate in the facts and circumstances of the case, wherein at para 63 following has been laid down:-

> "63. In this day and age of fast paced development, it is completely understandable for the state government to want to acquire lands to set up industrial units. What, however, cannot be lost sight of is the fact that when the brunt of this „development is borne by the weakest sections of the society, more so, poor agricultural workers who have no means of raising a voice against the action of the mighty state government, as is the case in the instant fact situation, it is the onerous duty of the state Government to ensure that the mandatory procedure laid down under the L.A. Act and the Rules framed there under are followed scrupulously otherwise the acquisition proceedings will be rendered void ab initio in law. Compliance with the provisions of the L.A. Act cannot be treated as an empty formality by the State Government, as that would be akin to handing over the eminent domain power of State to the executive, which cannot be permitted in a democratic country which is required to be governed by the rule of law."

25. That since the entries made qua the land in question have been ordered to be deleted in terms of the impugned order, as such, a reference to the relevant provisions of the Jammu and Kashmir Land Revenue Act, (for brevity 'the Act of 1976') becomes imperative herein.

Chapter IV of the Act, 1976, deals with records of rights and annual records. A record of rights consists of Khewat, Khasra, Jamabandi etc and till it is revised it hold the field.

Section 21 of the Act of 1976, provides for record of rights and documents included therein.

Section 24 of the Act of 1976, provides for procedure for making record and sub section 4 of Section 24 casts a duty upon the revenue officer to inquire into the correctness of all the entries in the register of mutation and note all acquisition coming to his knowledge. The expression 'inquire' appearing in sub-section 4 suggests contemplating of the same by providing an opportunity of hearing to the concerned person(s) in respect of whose entry correctness is sought or is warranted.

26. A plain reading of Section 24 (4) would prima facie suggest that while effecting variation of entry in the records, a notice or hearing have had to be provided to the effected person(s). The said requirement of notice or hearing even though is not specifically provided there under in sub-section

4 of Section 24, yet the said requirement can in law said to be imbedded in the said provision. A reference to the judgment of the Apex Court in this regard passed in case titled as "Dharampal Satyampal Limited vs. Deputy Commissioner of Central"

> reported in 2015 (8) SCC 519, would be relevant and germane herein, wherein the Apex Court in para 24 and 28 has laid down following:-
>
> "24. The principles have a sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide a great humanizing factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take an administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision-making that a decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong."
>
> "28. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not."

27. The respondent No. 2 in view of the provisions of the Land Revenue Act (supra), as also the judgment of the Apex Court in Dharampal's case (supra) could not have directed deletion of the entries of the petitioners from the revenue records at their back in breach of the principles of natural justice inasmuch as, the above provisions of the Act. The impugned order, therefore, issued by the respondent No. 2 directing deletion of entries qua the parcels of land possessed by the petitioners being Shamilat Deh and handing over to the respondent Nos. 4 and 5 is not legally sustainable.

28. The respondents have manifestly, proceeded and dealt with the petitioners qua the land in question having been possessed by them legally and validly as Shamilat Deh, illegally, unfairly, unreasonably and arbitrarily in the process having patently infringed their legally recognized rights and interest with impunity which cannot be countenanced by law.

29. For what has been observed, considered and analyzed hereinabove, the instant petition succeeds and by issuance of a writ of Certiorari, impugned Order No.DCK/LA/2018-19/1280-81 dated 14.02.2019 passed by the respondent No. 2 is quashed.

30. By issuance of writ of mandamus, the respondents are commanded to process the payment of compensation to the petitioners in accordance with law for their respective portion/parcels of land taken over from them while treating the same to have been acquired pursuant to notification No. 08 of 2018 dated 23.01.2018 issued under Section 4(1) of the J&K land Acquisition Act, 1990 (Svt.) read with Notice No. DCK/ADCK/LA/2018-19/165-72 dated 28.08.2018 issued under Sections 9 and 9-A of the Act of 1990 expeditiously, preferably within a period of three months from the date of receipt of the certificated copy of this judgment.

31. Disposed of along with connected CM(s), in the above said terms.

(Javed Iqbal Wani) Judge Jammu 11.02.2022 Bir* Whether the order is speaking: Yes Whether the order is reportable: Yes