

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

Case: WP(C) No.1834/2022

Kanta Devi and others

..... Petitioner(s)

Through :- Ms. Himani Khajuria, Advocate vice
Mr. Ankur Sharma, Advocate

Vs

Union Territory of J&K and others

.....Respondent(s)

Through :- Ms. Priyanka Bhatt, Assisting Counsel to
Mrs. Monika Kohli, Sr. AAG

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER

24.09.2025

01. The petitioners, through the medium of the instant petition, challenge the eviction order dated 21.02.2022 issued by respondent No.3 against the petitioner Nos.2 & 3. They contend that the eviction order was issued without adhering to the principles of natural justice and is therefore unsustainable in the eyes of law. The record reveals that on the very first date of hearing, the Court being *prima facie* satisfied has been pleased to grant *Status Quo* as regards the possession of the land in question vide order dated 12.09.2022 and the *Status Quo* order remains in effect to date.

02. The petitioners, by way of the instant petition, are seeking quashment of the impugned eviction order and besides seeking a direction against the respondent No.2 to consider and decide the applications filed by the petitioners against respondent Nos.5 & 6 as well as other illegal encroachers.

03. By way of the impugned eviction order dated 21.02.2022, it is specific case of the petitioner Nos.2 & 3 that they have been evicted/ejected from the

common pathway, i.e. the proprietary land of the petitioners measuring 1 Kanal 2 Marlas comprising under Khasra No.152/53, situate at Village Narainpur, Tehsil and District Kathua as the same have been issued against the principles of natural justice and is not sustainable in the eyes of law.

04. It is the claim of the petitioners that they are recorded as the co-sharers of the lands comprising under Khasra Nos.50, 51, 59, 73, 74, 83 and 97 situate at Village Narainpur Tehsil and District Kathua and the revenue records (Khasragirdarwis) and the concerned mutation have also been attested in their names, establishing their absolute ownership of these proprietary lands.

05. The further case of the petitioners is that they filed a complaint against respondent Nos.5 & 6, who are alleged illegal encroachers. However, respondent No.3 failed to take any action as warranted under law and the matter was also brought to the notice of respondent No.2 without any resolution. In retaliation, respondent No.5 filed a false and frivolous counter complaint alleging that petitioner Nos.2 & 3 were illegal encroachers on the common pathway (Bando-Basti Rasta) on the land comprising under Khasra No.152/53. Contrary to this claim, the petitioners submit that the land comprising under Khasra No.152/53 is the proprietary land of the petitioners as per the revenue record. It has been alleged that the respondent No.3 in active connivance with respondent No.5 arbitrarily ejected/evicted the petitioner Nos.2 & 3 from the land comprising under Khasra No.152/53 in a clandestine manner, despite their continuing ownership. The eviction was based solely on a report by respondent No.4, without affording the petitioners an opportunity to be heard. Despite repeated appeals to respondent Nos.2 & 3 to take action

against the illegal encroachers, no relief has been provided. Aggrieved by these actions, the petitioners have filed the instant petition challenging the eviction order on the grounds of arbitrariness and violation of the principles of natural justice.

06. It has been further pleaded that the impugned order has been issued contrary to the revenue records, which ostensibly prove that the petitioners are the owner in possession of the said land. Despite this, the respondents have sought to evict the petitioners through an illegal order. Hence, the instant petition has been preferred.

07. *Per contra*, Ms. Priyanka Bhatt, Assisting Counsel appearing vice Mrs. Monika Kohli, Sr. AAG on behalf of the respondents submits that detailed objections along with the latest status report dated 26.03.2025 have been filed. A perusal whereof reveals that in pursuant to order passed by this Court dated 16.10.2024, the Deputy Commissioner, Kathua vide communication dated 27.01.2025 has constituted a Demarcation Commission with a view to demarcate the land under Khasra No.53 of Village Narainpur, Tehsil and District Kathua, the said Demarcation Commission report dated 04.02.2025, reads as follows:-

- a) That as per ROR for the year 1979-80 BK, the land measuring 1 Kanal 13 Marla comprising of Khasra No.53 situate at Village Narainpur, Tehsil & District Kathua is recorded as Share-E-Aam Gair Mumkin Rasta under the ownership of Isher Das & Ors.

- b) That land measuring 11 Marla comprising of Khasra No.53 min has been acquired by the Railway Department vide mutation No.153 of village Narainpur, Tehsil & District Kathua.
- c) That during Girdawari crop Rabi 1972 , the kind of soil for land measuring 01 Kanal 02 Marla comprising of khasra No.53 min situated at Village Narainpur, Tehsil & District Kathua has been changed from Gair Mumkin Rasta to Abi under the cultivation of Des Raj Share holder (husband of the petitioner No.1 namely Kanta Devi).
- d) That during crop Kharief 2021, entry of Ganesh Kumar (petitioner No.2) and Naresh Kumar (petitioner No.3) sons of Des Raj has been expunged vide order No.DCK/SQ/2018-19/2031-46 dated 19.08.2018 issued by the Office of Deputy Commissioner, Kathua.
- e) That the Demarcation Committee has further submitted that on spot, no construction has taken place in land measuring 01 Kanal 13 Marla comprising of Khasra No.53 situated at Village Narainpur, Tehsil & District Kathua. It is submitted that the land measuring 11 marla comprising of Khasra No.53 min is under the possession of Railway Department and land measuring 01 Kanal 02 Marla (Share-e-aam Bandobasti Rasta) comprising of Khasra No.53 min situated at village Narainpur, Tehsil & District Kathua is illegally encroached/cultivated by Ganesh Kumar (petitioner No.2) and Naresh Kumar (petitioner No.3) sons of Des Raj.

Copy of the Demarcation report dated 04.02.2025 has also been placed on record as **Annexure-3** along with the said status report.

08. In addition, the respondents have also filed a detailed reply, wherein they raise a preliminary objection that no legal fundamental or statutory legal rights of the petitioners have been infringed and the petitioner have not stated true and correct facts in the instant petition. Accordingly, the respondents submit that the writ petition is devoid of any merit and deserves to be dismissed.

09. Furthermore, the respondents have taken a preliminary objection that the petitioner has not approached this Court with clean hands and has concealed the material facts. On this ground alone, the writ petition deserves dismissal as no cause of action has accrued to file the instant petition which is *sine-qua-non* for seeking indulgence of this Court. The respondents have taken a specific stand that in terms of Section 133 of Jammu and Kashmir Land Revenue Act, 1996, it empowers the respondents to evict/eject illegal encroachers from the State/Government Land. In the aforesaid backdrop, the petitioner Nos.2 & 3 were evicted with immediate effect from the common pathway comprising of Khasra No.53 min of village Narainpur Tehsil & District Kathua. The impugned eviction order was therefore lawfully issued.

10. Learned counsel appearing on behalf of the respondents has placed reliance upon Section 133(1) of The Jammu and Kashmir Land Revenue Act 1996 which reads as under:-

“The Section 133 of the Jammu and Kashmir Land Revenue Act, 1996 Svt. empowers the answering respondent to evict/eject illegal encroachers from the State/Government Land/Water bodies/Common

Land and forbid the repetition of such encroachment. Accordingly, it was ordered that the petitioner No.2 & 3 who were encroachers be evicted out of common pathway comprising of khasra No.53 min of village Narainpur Tehsil and District Kathua with immediate effect. It is pertinent to quote here Section 133(1) of the J&K Land Revenue Act 1996 Svt. (1939 A.D.) when land which has been reserved for the common purposes of the co-sharers therein has been encroached on by any co-sharer, a Revenue officer not below the rank of an Assistant Collector of the 1st Class or the officer in-charge of the Settlement or an Assistant Collector of the 1st Class sub-ordinate to him may, on the application of any other co-sharer, eject the encroaching co-sharer from the land, and, by order duly proclaimed, forbid repetition of the encroachment.”

11. The respondents while filing the reply affidavit has also clarified that as per the revenue record with particular reference to copy of the Jamabandi for the year 1996-97 and for the year 2019-20, land measuring 02 kanal 09 marla comprising of Khasra No.51 has been recorded as Gair Mumkin Makan, out of the land measuring 03 kanal 04 marla comprising of khasra No.74, 02 kanal which has been recorded as Warhal Awal, 01 kanal has been recorded as Gair Mumkin Aar-Banna and 04 Marla has been recorded as Gair Mumkin Pond, land measuring 01 kanal comprising of khasra No.83 has been recorded as Warhal Awal (Agriculture land) out of land measuring 06 kanal 14 marla comprising of khasra No.50, 06 kanal 04 marla has been recorded as Gair Mumkin Rasta and 10 Marla has been recorded as Gair Mumkin Kotha.

12. The respondents have taken a specific stand that the petitioner Nos.2 & 3 are illegal encroachers on the pathway i.e. (Bandobasti Rasta) comprising of Khasra No.53 min situate at Village Narainpur Tehsil and District Kathua and

accordingly the notice impugned was issued with a view to evict them from the said khasra number in compliance to the order passed by the Deputy Commissioner, Kathua dated 29.08.2018 which is the subject matter of the instant petition and the said order has already been stayed by this Court by virtue of order dated 12.09.2022 which according to Ms. Priyanka Bhatt, is harshly working against the interest of the respondents and also contrary to the demarcation carried by the said Commission and its report.

13. Heard the learned counsel for the parties at length and perused the record.

14. From a bare perusal of the record which has been examined by this Court, it has emerged that the petitioner Nos.2 & 3 have encroached upon a common village pathway comprising of khasra No.53 min situate at Village Narainpur Tehsil and District Kathua. As per the revenue records, the pathway in question (Bandobasti Rasta) has been unlawfully occupied by the said petitioners. This fact is further corroborated by the report submitted by the Demarcation Commission, which was constituted in compliance with the order passed by this Court dated 29.11.2024. The report of the Demarcation Commission clearly indicates that the demarcation of Khasra No.53 min, measuring 1 kanal and 2 maralas was duly carried out. For verification, the North-West corner of the adjoining Khasra No.54 was identified, and the boundaries of Khasra No.53 were accordingly established. The report records that no construction exists on Khasra No.53 at the site. However, it reveals that the land measuring 11 marlas is under the possession of the Railway Department and the land measuring 01 kanal and 02 marlas (Share-e-aam

Bandobasti Rasta) which land is the subject matter of the instant petition has been illegally encroached/cultivated by Ganesh Kumar and Naresh Kumar sons of Des Raj i.e. petitioner Nos.2 & 3 herein.

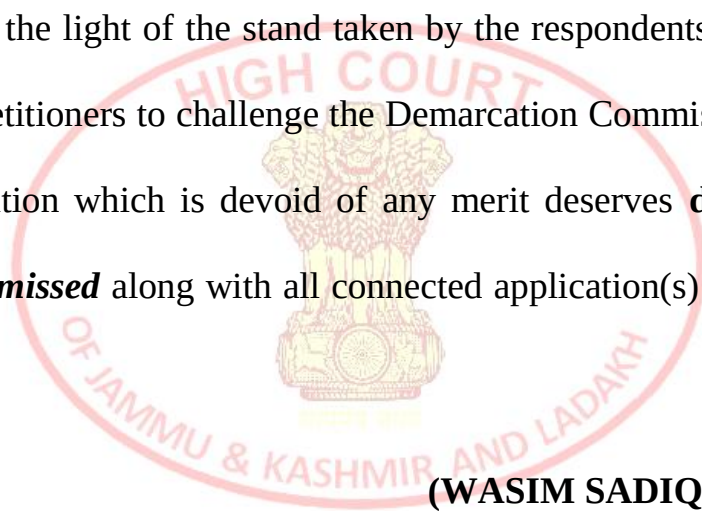
15. Thus, in the light of the stand taken by the respondents, wherein, it has been alleged that the petitioners have been encroached the said land which is the '**Bandobasti Rasta**' as per the report of the Demarcation Commission constituted in pursuant to order passed by this Court by the office of the Deputy Commissioner, Kathua, wherein, the concerned Naib Tehsildar has been designated as a Chairman of the said Commission comprising of four additional members of the said commission. The said commission has been constituted to demarcate the land under khasra No.152/53 of the said village which has submitted a detail report which establishes beyond any reasonable doubt that the said Bandobasti Rasta in the land measuring 1 kanal and 02 marlas has been illegally encroached/cultivated by the petitioners. Thus, the stand of the petitioners that they are owners of the land in question is falsified by the report of the Demarcation Commission which till date has not been questioned by the petitioners.

16. When the learned counsel for the petitioners was confronted with the said objection raised by this Court with regard to the acceptance of the said Demarcation Commission report as no challenge as on date has been made by the petitioners, the petitioners sought liberty of this Court to challenge the said demarcation report.

17. In the aforesaid backdrop, this Court allows the prayer of the petitioners and grant liberty to the petitioners to challenge the said

Demarcation Commission report mentioned (supra) if so advised, within a period of one week from today and till the said remedy is availed by the petitioners, the interim order dated 12.09.2022 passed by this Court in the instant petition shall continue to remain in operation only for a period of one week from today. It is further clarified that the interim order is extended only for a period of one week till filing of the petition challenging the said report and the same shall be extended subject to any further orders to be passed by the appropriate Court, where the petitioners avail the said remedy to challenge the said demarcation report.

18. Thus, in the light of the stand taken by the respondents and the liberty sought by the petitioners to challenge the Demarcation Commission report, the instant writ petition which is devoid of any merit deserves **dismissal** and is accordingly, **dismissed** along with all connected application(s) with the liberty as prayed for.



(WASIM SADIQ NARGAL)
JUDGE

JAMMU
24.09.2025
Shammi

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No