

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

Reserved on 28.10.2024  
Pronounced on 08.11.2024

**OWP No. 201/2015(O&M)**

Jagar Nath Peshin and others

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

Through: Mr. M. K. Raina, Adv.

**vs**

State of J&K and another

..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG

**OWP No. 240/2015  
CONOW No. 63/2018**

Jagar Nath Peshin and others

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

Through: Mr. M. K. Raina, Adv.

**vs**

State of J&K and others

..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG for Nos. 1 and 2  
Mr. P. N. Bhat, Adv. for No. 3

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGMENT**

**OWP No. 201/2015**

1. This writ petition has been filed by the petitioners for directing the respondents to implement the provisions of the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act 1997 to preserve and protect the property of the petitioners and to direct the

respondents to recover the compensation from the encroachers on account of unauthorized occupation and use of the property.

2. It is pleaded by the petitioners that the petitioners along with other co-shares, namely, Moti Lal Peshin, Smt. Shori Koul and Gouri Shori are the joint owners in possession of land measuring 6 kanals 15 marlas comprising survey No. 359, 14 marlas comprising survey No. 647, 9 kanals 9 marlas comprising survey No. 649, 5 kanals and 11 marlas comprising survey No. 366, 8 marlas comprising survey No. 372, 3 kanals and 9 marlas comprising survey No. 658 and 3 kanals and 4 marlas comprising survey No. 657 situated at Wagoora, Tehsil Chadoora presently Tehsil Bagat, Kanipora, District Budgam. The petitioners, Moti Lal Peshin and Smt. Shori Koul own one half of the above-mentioned land and Gouri Shori owns other half of the abovementioned land.
3. The petitioners claim that the property is joint and undivided, but Smt. Gouri Shori in connivance with other persons is bent upon to sell the land depriving the petitioners of their share in the said property. It is also stated by the petitioners that they are migrants as they migrated in the year, 1990 and the property left behind by them is a migrant property and District Magistrate is under statutory obligation to preserve and protect the above-mentioned property. It is also stated that the above-mentioned property has been encroached by some persons.
4. Response has been filed by the respondents stating therein that as per report of Tehsildar concerned, the petitioners are the recorded owners of land measuring 3 kanals and 2 marlas comprising survey Nos. 359, 649 and 366

situated at Waghoora. It is further stated that as per the report of Tehsildar, the petitioner No.1, father of petitioner Nos. 2 and 3, namely, Som Nath Peshin, are the recorded owners of land measuring 11 marlas only while the brother of petitioners, namely, Moti Lal Peshin is recorded owner of land measuring 12 marlas and one Gouri Shori is the recorded owner of land measuring 2 kanals and 4 ½ marlas. It is stated that the land of the petitioners is still intact and currently vacant on spot and no encroachments have been found on spot.

5. In view of the categorical stand of the respondents, no encroachment has been made in respect of the land of the petitioners, no case for indulgence is made out, as such, the present petition is found to be misconceived, the same is dismissed.

**CONOW No. 63/2018**

1. For the reasons in the application, the same is allowed. The delay in substituting petitioner No. 3 in place of petitioner No. 1 as his legatee is condoned.
2. Application stands disposed of.
3. Application on behalf of petitioner No. 3 to implead him as legatee in place of petitioner No. 1 is also allowed.
4. Registry to diarise the application.

**OWP No. 240/2015**

5. This writ petition has been filed by the petitioners for directing the respondents to implement the provisions of the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act

1997 to preserve and protect the land measuring 2 kanals 2 marlas comprising survey No. 99 situated at Suthsoo Kalan Tehsil Chadura Budgam, of the petitioners and not to accord permission for alienation of the land in favour of the any person till disposal of the petition and `for directing the official respondents to recover the compensation from the encroachers on account of use and occupation of above said property.

6. It is stated that the petitioners along with co-sharers namely, Moti Lal Peshin, Smt. Shori Koul and Gouri Shori jointly own the land measuring 24 kanals and 12 marlas situated at Suthusu Kalan, Tehsil Chadoora, District Budgam. The respondent No. 3 has sold the land measuring 15 kanals and 2 marlas and there remains only 9 kanals and 1 marla of land. It is further stated that as per the report of the Tehsildar, the petitioners are the owners to the extent of 2 kanals and 2 marlas of land, whereas the private respondent owns land measuring 9 kanals and 1 marlas in the said village. It is submitted that the private respondent had executed a power of attorney of land measuring 11 kanals and 3 marlas exceeding her share by 2 kanals and 2 marals and the attorney holders, namely, Ghulam Mohd. Dar, Ghulam Qadir Dar and Ghulam Mohd. Ganai under the garb of above-mentioned attorneys have encroached upon the land of the petitioners.
7. Mr. M. K. Raina, learned counsel for the petitioners submits that the private respondent No. 3 cannot alienate the property in excess of her share and as such the migrant property is required to be protected under the Act (supra).
8. Mr. P. N. Bhat, learned counsel for respondent No. 3, on the contrary, has contended that the dispute involved in the present petition is between two

migrants and the petitioners cannot seek the enforcement of the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act 1997 against another migrant.

9. Heard and perused the record.
10. From the averments made in the petition it becomes evident that the grievance of the petitioners is in respect of the attorneys executed by the private respondent in favour of Ghulam Mohd. Dar, Ghulam Qadir Dar and Ghulam Mohd. Ganai and they are seeking indulgence of this Court to restrain the respondent No. 3 from alienating the property beyond her share.
11. The petitioners in the present petition in fact want to enforce the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act 1997 against another co-sharer i.e. respondent No. 3 but the petitioners cannot invoke the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act 1997 against another migrant in respect of the jointly owned property and if there is any dispute between two migrants in respect of the their joint property, they can avail the remedy as available under law but not under the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act 1997. The preamble of the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act 1997 clearly defines its object, which is to preserve and protect the migrant property against the un-authorized occupation and further to prevent the distress sale of the migrant property. The legislature never intended to settle the disputes between the two migrants in respect of their joint properties through the

