

State cannot be permitted to raise the plea of adverse possession over the property of its citizen occupied forcibly without following due process of law

The Jammu & Kashmir High Court in the case of **Mushtaq Ahmad Jan vs Government of J&K [LPA No. 55/2024] dated July 11, 2025**, has held that the State cannot be permitted to invoke the doctrine of adverse possession to legitimise forcible and unauthorised occupation of private land, reiterating that such action is a violation of both constitutional and human rights of the citizen.

In this case, it was the grievance of the landowners that 8 kanals and 13 marlas of their land were taken over by the Rural Development Department in 1958-59 without initiating any acquisition proceedings under law, but, when they approached the High Court previously, the Single Judge of this Court denied relief on the grounds of delay and laches.

Now, the Division Bench has held that the State, being a welfare State, cannot be permitted to raise the plea of adverse possession over the property of its citizen occupied forcibly without following due process of law, and a plea of delay and laches cannot be raised in a case of continuing cause of action. So long as the State remains in unauthorised possession, the cause of action to seek compensation remains alive.

The Bench noted that even after the 44th Constitutional Amendment, which removed the right to property from the list of fundamental rights, the right remained a constitutional right under Article 300-A and continued to be protected as a human right. As far as the respondent's argument that the petitioner's ancestor had voluntarily donated the land, the Bench observed that presumption cannot replace proof, especially when fundamental rights are at stake. The appellant's claim that their ancestor had allowed use of the land based on an assurance of compensation was more credible than the unsubstantiated claim of donation. Accordingly, the High Court directed the authorities to initiate acquisition proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Link

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