

Indic Legal Law Journal

Volume No. 1

Issue No. 4

October - November 2022

Pages: 1 - 5

Author Name: Khushi Kabra

ROSHNI ACT- THE LAND JIHAD

Introduction

The most infamous Roshni Act of J&K was recently scrapped down by the High Court of J&K after hearing various instances of corruption in relation to the Act. This Act is commonly known as “Land Jihad of Jammu” by the Right Wing Activists of the area because according to them this was being aimed at changing the demography of the Jammu Region however on the other hand the mainstream political leaders keep on accusing government of being selective against Muslim Community of the region.

What is Roshni Act?

Roshni Act is also known as the J&K State Lands (Vesting of Ownership to the Occupants) Act, 2001. It was enacted by the Government of Jammu and Kashmir in the year 2001 with the main aim to earn a significant amount of money i.e. over Rs 25,000 Crore by transferring of around 20.55 lakh kanals (1 acre = 8 kanals) of state land for the purpose of commissioning of hydroelectric power projects in the state and also this was the reason why it was named as “Roshni Act”.¹

The main object behind the Act set out that various government lands had been encroached and had come under various types of construction or plantations including orchards. According to the Act the eviction of such lands is very difficult if not impossible because of the procedure established under law as per which an encroacher has to be given an opportunity of being heard before he/ she is evicted. The removal of encroachment en-block will also lead to mass unrest, it was noted.

¹ Mridul Thaploo, Roshni Act and the Land Jihad in Jammu: An Untold Story, (13 October 2020), <http://www.opindia.com/2020/10/roshni-act-jammu-and-kashmir-high-court-land-jihad/>

Indic Legal Law Journal

Clause (h) of Section 2 of the Act defined the State land in the following terms:

"Lands so defined in 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 Kachcharai and forest land."

By virtue of Section 4(1-A) (ii) of the Act, an “occupant” who is in possession of State land at the commencement of the Act could be considered for conversion of the occupancy of the state land into freehold rights in the prescribed manner.

Further, Section 8 of the Act which talked about ‘vesting of rights’ contained a non-obstante clause and enabled vesting of all rights, title and interest in any State land in the occupant, subject to the conditions laid down in the law.

Section 8 (1) (c) prescribed that the occupant pays the price as is determined in the manner prescribed for such land to the government.²

There were several amendments being made to the Act wherein the cut-off date for the land encroachment was changed many times. Initially the cut-off date for the land encroachment was the year 1990 later in the year 2005 it was changed to the year 2004 and finally it was relaxed further to the year 2007.³

In 2004, there was an amendment made to the Act according to which initially the total land which could be vested under Section 8(b) was fixed to 10 kanals only but by the virtue of amendment this limit was increased to 100 kanals.⁴

There was also an another amendment made to the Act by the government wherein the government gave the ownership rights of agricultural land to the farmers who were its

² Murali Krishnan, Roshni Land Scam & Jammu and Kashmir High Court Judgment Explained, (10 December 2020, 9:53 am), <https://www.barandbench.com/columns/litigation-columns/roshni-land-scam-jammu-kashmir-high-court-judgment>

³ Mridul Thaploo, Roshni Act and the Land Jihad in Jammu: An Untold Story, (13 October 2020), <http://www.opindia.com/2020/10/roshni-act-jammu-and-kashmir-high-court-land-jihad/>

⁴ Murali Krishnan, Roshni Land Scam & Jammu and Kashmir High Court Judgment Explained, (10 December 2020, 9:53 am), <https://www.barandbench.com/columns/litigation-columns/roshni-land-scam-jammu-kashmir-high-court-judgment>

Indic Legal Law Journal

occupants for free of cost and they were charged only for the documentation fees which was limited to Rs. 100/kanal.⁵

Why it is called “Land Jihad”?

This Act is popularly known as the scheme of “Land Jihad” by the Right Wing Activists of the Jammu region. According to them this act was a well-knit plan launched across the border in an attempt to change the demography of the Jammu region and this process was continuous for the last 17 years right under the nose of the authorities in the state. According to these Right Wing Activists the main objective behind the implementation of Act was to accommodate people from Muslim communities in the Hindu-dominated areas of Jammu by legalizing the illegal occupants of the land and making them the true owner. The reason why such activities were eccentric can be traced back to the fact that the law under which such legalizations were made, has itself been declared unconstitutional.⁶

Further, according to the Census Reports of the year 2001, the Hindu constituted 65% of the total population in Jammu whereas Muslims constituted 31% of the total population of the Jammu,⁷ however as per the Census Reports of the year 2011, the Muslim Population in the region saw an increase by 3% whereas the Hindu population in the region was declined by 3%, the reason for the same is clearly visible.⁸ Also, as per the reports, there are more than 25000 illegal beneficiaries of the Roshni Act in the Jammu region out of which 90% belong to the Muslim Community whereas only 4500 beneficiaries are there in the Kashmir region.⁹

Misuse of the Act and Reports of Irregularities

In the year 2009 the State Vigilance Organization found irregularities in the process of transferring of ownership rights as well as allotment of lands to beneficiaries who did not satisfy the criteria for the same. Numerous government officials were booked under the same and the prominent case came to be known as the Gulmarg Land Scam wherein various government officials and IASs were accused of illegally transferring the land of Gulmarg

⁵ Mridul Thaploo, Roshni Act and the Land Jihad in Jammu: An Untold Story, (13 October 2020), <http://www.opindia.com/2020/10/roshni-act-jammu-and-kashmir-high-court-land-jihad/>

⁶ Mridul Thaploo, Roshni Act and the Land Jihad in Jammu: An Untold Story, (13 October 2020), <http://www.opindia.com/2020/10/roshni-act-jammu-and-kashmir-high-court-land-jihad/>

⁷ Jammu & Kashmir Official Portal, <https://jk.gov.in/jammukashmir/?q=demographics>

⁸ Census of India 2011, Jammu & Kashmir Series-02 Part- XII-A, District Census Handbook Jammu, https://censusindia.gov.in/2011census/dchb/DCHB_A/01/0121_PART_A_DCHB_JAMMU.pdf

⁹ Mridul Thaploo, Roshni Act and the Land Jihad in Jammu: An Untold Story, (13 October 2020), <http://www.opindia.com/2020/10/roshni-act-jammu-and-kashmir-high-court-land-jihad/>

Indic Legal Law Journal

Development Authority to private parties. However, the matter did not come into limelight at the time of its happening.¹⁰

Further, in the year 2014 the Comptroller Auditor General submitted a report which revealed that the government instead of earning estimated revenue of Rs.25000 crore earned only an amount of Rs 76 Crore between the years 2007 to 2013. The report mentioned that there were irregularities as well as the malpractices which were being undertaken by the then officials occupying higher positions; the prices of the land were deliberately reduced by a standing committee so as to benefit the big-wigs of the state and spread corruption in the state along with the agenda of changing the demography of the state.

After the submission of the Report of CAG the State Vigilance Organisation which was tasked by the government for investigating the case was not working diligently and was also many times accused of deleting the names of Senior IAS/KAS Officers involved in the scam from the investigation report and including only the lower rank officers like Tehsildars, Patwaris, etc. The investigation of State Vigilance Organisation was completed in the year 2015 under five different cases clubbed together which found more than 25 government officials accused of the misuse of act.

Further, according to the report submitted by J&K Law Commission in March 2020 under the aegis of Justice (retd.) M.K. Hanjura the lands under the Act have been transferred to those who weren't in real possession of the land because their name was not present in the Girdwari which was being made by the Patwaris and the Girdwars and almost all of the Sections under the Act were violated by the government officials. Under Section 6, it was mentioned that lands under the vicinity of highways were only to be given under lease but there are instances where the lands have been transferred illegally to the occupants. Thus, the Committee recommended the government to retrieve the land which was illegally occupied by the illegal beneficiaries of the Act.¹¹

Repeal of Act

The then Governor of the state of J&K Satya Pal Malik repealed the Act in October 2018 by stating that "All pending proceedings under the Act shall stand cancelled immediately... any

¹⁰ Basharaat Masood, Jammu and Kashmir Roshni Act: Who it helped own land, and why it has been scrapped, Indian Express, (09 December 2020, 09:53:55am), <https://indianexpress.com/article/explained/jammu-kashmir-roshni-act-scraped-jk-ownership-rights-cbi-probe-7075927/>

¹¹ Mridul Thaploo, Roshni Act and the Land Jihad in Jammu: An Untold Story, (13 October 2020), <http://www.opindia.com/2020/10/roshni-act-jammu-and-kashmir-high-court-land-jihad/>

Indic Legal Law Journal

action taken under the provisions of the repealed Act shall not be invalid.”. Further, in September 2019 he ordered for State Anti-Corruption Bureau to look into all the transactions related to Roshni Act. However, following this order of Governor a petition was filed in the High Court to transfer the case to CBI for investigation.

The Divisional Bench of Hon’ble High Court of J&K under Chief Justice Gita Mittal and Justice Rajesh Bindal after hearing the matter in October 2020 declared the Roshni Act to be “illegal unconstitutional and unsustainable” and also held all the transactions regarding the allotment of land void ab initio and unconstitutional. It further ordered for CBI look into the matter relating to transfer of ownership, sought action against bureaucrats involved, and asked the government to make public the names of prominent people allotted land.¹²

Conclusions

Thus it can be concluded that decision of the Hon’ble Court of declaring the Roshni Act as unconstitutional and void ab initio has worked towards retaining the faith of people in judiciary because this Act has caused a widespread corruption and has helped the iniquitous entities in earning huge amount of money from the state owned land. This action of repealing the act should have happened decades before nevertheless this move of the Hon’ble High Court is “better late than never”

¹² Basharaat Masood, Jammu and Kashmir Roshni Act: Who it helped own land, and why it has been scrapped, Indian Express, (09 December 2020, 09:53:55am), <https://indianexpress.com/article/explained/jammu-kashmir-roshni-act-scraped-jk-ownership-rights-cbi-probe-7075927/>