

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

Reserved on: 02.09.2026
Pronounced on: 10.09.2026
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*Whether the operative part or full
judgment is pronounced:* **Full**

OWP No.529/2019 (WP(C) No.1397/2019)

GHULAM AHMAD MALLA & ORS.

...PETITIONER(S)

Through: - Ms. Saima Mehboob, Advocate.

Vs.

STATE OF J&K AND ORS.

...RESPONDENT(S)

*Through: - Ms. Rahella Khan, Assisting Counsel-for R1 to R4
Mr. M. A. Beigh, Advocate-for R5.*

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) The petitioners have filed this petition for commanding the respondent-Horticulture Department to constitute a fresh Committee for re-assessment of the loss caused to the fruit-bearing walnut trees of the petitioners existing on their proprietary land comprising Survey Nos.972, 998 and 971min, situated at Dreygam Budgam. A further direction has also been sought to the respondent-Power Grid Corporation of India Ltd. to acquire the land coming directly under the alignment of the 220 KV transmission line in accordance with the provisions of the Land Acquisition Act and to pay compensation for the said land strictly in

accordance with the applicable rules and the prevailing market value.

2) The abovementioned reliefs have been sought by the petitioners on the ground that 09, 06 and 13 fruit-bearing walnut trees of petitioners No. 1, 2 and 3 respectively, were damaged due to the laying of 220 KV transmission line over and above the land of the petitioners. The respondent-Horticulture Department assessed the loss suffered by the petitioners but not in accordance with the present and prevalent market rates. According to the petitioners, while making the assessment, the respondent-Horticulture Department has taken the maximum age of the walnut trees upto 60 years, whereas, in fact, a young and healthy walnut tree has an average life span of about 200 years. Besides, the respondent-Horticulture Department fixed the rate of walnuts at the rate of Rs.114 per kilogram in terms of SRO-1985, whereas the petitioners were entitled to compensation on the basis of the prevailing market value. It is also contended by the petitioners that, due to radiation caused by the electric wires passing over their land, their land has become completely useless.

3) Respondent Nos.1 to 4 have filed their response, stating therein that 09 trees of petitioner No.1 (05 fruit-bearing and 04 non-fruit-bearing), were damaged and the loss suffered

by the said petitioner amounting to Rs.6,92,810/ was determined by the respondent-Horticulture Department. Similarly, 06 walnut trees of petitioner No.2 (04 fruit-bearing and 02 non-fruit-bearing), were damaged, and loss of Rs.5,13,130/- was assessed in favour of the said petitioner. Likewise, 13 fruit-bearing walnut trees of petitioner No.3 were damaged and the loss of Rs.12,10,380/- was assessed by the respondent-Horticulture Department in favour of the said petitioner. It is stated that the aforesaid assessment was made in terms of SRO 493 of 1985 and SRO 386 dated 28.12.1995. The rates for claiming compensation were revised at the rate of 10% after every two years in terms of the said SRO 386 of 1995. It is further stated that the rate for walnut crop was initially fixed @ Rs.40/- per kilogram, which has been enhanced to Rs.114/- per kilogram at the time of assessment of the loss suffered by the petitioners.

4) It is further stated that after taking into consideration the average yield production per year and age of the tree, the SRO was framed by the experts. It is further stated that the rates of the crop fluctuate and may fall even below Rs.114/- per kilogram. The respondent Nos.1 to 4 have objected to the relief of re-assessment sought by the petitioners.

5) Respondent No. 5 has filed its response stating therein that the Power Grid Corporation laid down transmission line

way back in the year 2017-18 and while executing the aforesaid work, certain fruit-bearing trees came under the alignment of the transmission line and, as such, they were required to be felled down. However, before felling the trees, due procedure was adopted by counting the fruit-bearing trees and forwarding the details thereof to the Chief Horticulture Officer, Budgam, for proper assessment of the damages. The Chief Horticulture Officer, Budgam, assessed the damages and submitted a detailed report to the Power Grid Corporation vide communication dated 20.09.2018. On receipt of the said assessment, payment was accordingly made to the petitioners through their bank accounts and they received the assessed amount without any protest or objection and also took away the wood of the felled trees, the cost whereof was deducted from the assessment made by the Chief Horticulture Officer, Budgam. Thus, the claim of the petitioners that adequate compensation was not paid to them is incorrect. Once the petitioners have accepted the compensation on the basis of the assessment made by the Chief Horticulture Officer, Budgam, they are estopped from throwing challenge to the assessment made by the Chief Horticulture Officer through the medium of present writ petition. It is also the stand of respondent No. 5 that

possession of the land is still with the petitioners, and they are utilizing the same.

6) Learned counsel for the petitioners has restricted the claim of the petitioners only to the extent of re-assessment of the loss suffered by the petitioner and has submitted that the compensation has not been paid to the petitioners as per the market value.

7) *Per contra*, Mr. Beigh, learned counsel appearing for respondent No.5, has argued that compensation was duly assessed by the Chief Horticulture Officer, Budgam, and thereafter the assessed amount was paid to the petitioners, which was accepted by them without any objection or protest and, as such, they cannot turn around and challenge the assessment of compensation made by the Chief Horticulture Officer, Budgam.

8) Heard learned counsel for the parties and perused the record.

9) It is evident from the record that, in terms of communication dated 20.09.2018, the Chief Horticulture Officer, Budgam, submitted the assessment regarding the loss suffered by the petitioners on account of felling of their walnut trees. The petitioners, admittedly, have received the compensation pursuant to the assessment made by the

Chief Horticulture Officer, Budgam. Once the petitioners have accepted the compensation assessed by the Chief Horticulture Officer without any protest or objection, they are estopped from throwing challenge to the said assessment by asserting that the compensation was not assessed at the prevailing market rate.

10) In the above context, it would be appropriate to take note of the judgment of the Hon'ble Supreme Court "**M/s. New Bihar Biri Leaves Co. and others Vs. State of Bihar and others**", **AIR 1981 SUPREME COURT 679**, the Hon'ble Apex Court has observed as under:

"50. It is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. **The maxim is qui approbat non reprobat, (one who approbates cannot reprobate).** This principle, though originally borrowed from Scots Law, is now firmly embodied in English Common Law. According to it, a party to an. Instrument or transaction cannot take advantage of one part of a document or transaction and reject the rest, That is to say no party can accept and reject the same instrument or transaction."

11) Otherwise also, it is the positive stand of respondents No.1 to 4 that the compensation was assessed as per the SROs in vogue at the relevant point of time. The petitioners have not challenged the said SROs in the present petition

and, as such, once the compensation has been assessed by the Chief Horticulture Officer, Budgam, in terms of the SROs in vogue at the relevant point of time, and the petitioners have accepted the compensation so assessed, without any protest or objection, the relief claimed by the petitioners for re-assessment of the loss suffered by them cannot be granted.

12) In view of above, the petition lacks merit and is dismissed accordingly.

(Rajnish Oswal)
Judge

SRINAGAR

10.09.2026

"Bhat Altaf-Shergatiary"

Whether the **judgment** is reportable: **NO**

