

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 6 | Issue 3

---

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Roshni Act is a Shakespearean ‘Serpent Under the Innocent Flower’: A Critical Evaluation

---

JASPREET SINGH<sup>1</sup>

## ABSTRACT

*The Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Act sought to transfer the ownership rights of state land to its occupants on the provisioned payment of certain cost which was to be determined by the government. The government while enacting the Act claimed that out of the revenue that would be generated by the costs paid by the occupants, spending would be done on commissioning hydroelectric power projects. William Shakespeare in one of his most famous tragic plays, Macbeth, said, “look like th’ innocent flower, but be the serpent under’t”. In these lines, Shakespeare meant that ‘one should look innocent while pursuing murderous plans’ or ‘carry a legal appearance if your object or motive is illegal, in order to accomplish the illegal object without any hindrance or repulsion’. And so is the nature of the Roshni Act. The real object that has been officially claimed by the Jammu and Kashmir government is illusionary and has been held as such by the Jammu and Kashmir High Court. The Act is violative of many provisions of the Indian Constitution and, therefore, has been declared unconstitutional by the Jammu and Kashmir High Court.*

**Keywords:** equality, canals, Roshni act, state land, vacant land

## I. INTRODUCTION

“State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good.”<sup>2</sup> The preceding principle, laid down by the Indian judiciary, is significant for the initiation of the discussion on Roshni Act because it provides the guidance for the distribution of state resources while complying with the constitutional principles of ‘equality’ and ‘public good’. The Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Act, popularly known as Roshni Act was enacted in 2001 by the Jammu and Kashmir Government. The Act received the Governor’s assent on November 9, 2001 and on 13 November 2001, it was published in the

---

<sup>1</sup> Author is a student at the Law School, University of Jammu, India

<sup>2</sup> Public Interest Litigation v. Union of India (2012) 3 SCC 1

government gazette. The Act sought to transfer the ownership rights of state land to its occupants on the provisioned payment of certain cost which was to be determined by the government. The government while enacting the Act claimed that out of the revenue that would be generated by the costs paid by the occupants, spending would be done on commissioning hydroelectric power projects. This is the reason why the said Act was also known as Roshni Act as Roshni is the Urdu translation of the word “light” that is synonymous with “power”. Later on, several amendments were made to the Act and through such amendments the government conferred ownership rights of agricultural land to its occupants (farmers) for free.

### **Object of the Act**

The preliminary and opening lines of the Act explain the object of the Act which is “to provide for vesting of ownership rights to occupants of State Land for purposes of generating funds to finance Power Projects in the State.”<sup>3</sup>

## **II. THE CONCEPT OF STATE LAND**

The definitions of the terms used in the Act are incorporated in Section 2 of the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Act. There we find the mention of the concept of State land and vacant land and the dissimilarity between them. State Land is defined in Clause (h) of Section 2 as follows:

*“State land” means the land recorded as such in the [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 Kahcharai and Forest land;]*<sup>4</sup>

So, state land includes:

- a) The land which is recorded in the Revenue records
- b) Escheated Land to the government
- c) Kahcharai and Forest land for the purposes of Section 3-A (Section 3A provides for the mapping of the State Land)

State land has not been positively and comprehensively defined. It does not confine itself to

<sup>3</sup> Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Act

<sup>4</sup> Ibid

‘what is’ and has its meaning in negations as well. Section 2(h) also lays down as to *what will not be included* in the definition of State Land under the Act.

So, state land does not include:

- a) Any Government land mentioned in Section 3
- b) Any State land mentioned in Section 3

### **Section 3 – The lands to which the Act does not apply**

There are other state lands apart from those mentioned in Section 2(h). Such lands have been mentioned under Section 3. Generally, the Act does not apply to the types of land mentioned under Section 3 despite them being state land. They include:

- a) The land which is recorded or used as a pathway, grazing ground, graveyard, cremation ground, camping ground or irrigation channel
- b) The land which is held by any Government Department or institution under the control of the government
- c) The land which is covered by fields floating over water
- d) Forest land or wooden waste
- e) The land which is held by a person in a residential colony regularized by the Housing and Urban development Department
- f) Any land held by a person in pursuance of permission granted or allotment made by the Government under the provisions of Jammu and Kashmir Big Landed Estates Abolition Act, Samvat 2007 (1950 A.D.) or Jammu and Kashmir Agrarian Reforms Act, 1976 in respect of the land which has escheated to the Government under the provisions of any of the said Acts
- g) The land held by a person which is barred by the Limitation Act, Samvat 1995
- h) Other lands which are held by a person by virtue of various government orders.

It is important to note that all the lands under Section 3 are State lands yet the provisions of the Act do not apply to them.

### **III. THE CONCEPT OF VACANT LAND**

Another major kind of land is vacant land, mentioned under Section 2 of the Act. It means that land which is not occupied by any person. It does not have any existing lease or grant which is given by a competent authority. Section 2(j) of the Act defines the vacant land as follows:

*“Vacant land” means any State land which is not occupied by any person and in respect of which there is no existing lease or grant made by any competent authority.*

Section 4 of the Act provides for the auction of the State Land by the State in favour of permanent residents of the State subject to certain conditions. However, this power to auction will not prejudice to the power of the government to lease out state land under the Jammu and Kashmir Land Grants Act, 1960 or any other law for the time being in force. The vacant land could be granted for commercial use to the permanent residents of the state by a notification of the government for tourist resorts and in the cities of Srinagar and Jammu.

#### **IV. BAR ON THE POWERS OF CIVIL COURT**

One peculiar feature of the Act is what has been envisaged through its Section 14. It provides for the bar of jurisdiction of civil court. Section 14 has two clauses. Clause a restricts the civil court from exercising any jurisdiction in cases dealing with the concerned Act. It states:

No civil court shall have jurisdiction to settle/decide or deal with any question or to determination any matter arising under this Act or the rules made thereunder.

Clause b of Section 14 is restrictive on the power of civil court to exercise its power to examine the executive agents under the Act. Under clause b, the civil court shall endeavor to weigh the order of any officer or authority passed under this Act. It reads as:

No order of any officer or authority passed under this Act or the rules made thereunder shall be called in question in any civil court.

#### **V. FREEDOM OF OFFICERS**

Section 14 b stands firm to restrict civil courts from questioning the orders of the officers or authorities under the Act. Hence, officers enjoy wide freedom and almost no restraint in the exercise of their powers under the Act. The scope of the freedom of the officers and authorities while acting by the powers conferred upon them by the Act is widened even more when the substance of Section 15 is considered. The indemnity Section 15 reads as:

*“No suit, presentation, other legal proceedings shall lie against an officer or authority in respect of anything done or to be done in good faith purported under this Act or the rules made thereunder.”*

Hence, the officers under the Act have not only been given a large power but are also protected against legal actions by the aggrieved. The expression “good faith” has the propensity of being

taken as an assumption in almost every case. Therefore, it may confer “arbitrary” power on those who are acting authoritatively under the Act.

However, Section 17(2) has the provision for the punishment of Revenue Officers and other officers who make any wrong entry or incorrect report or certificate in respect of any state land.

It reads as:

*“A Revenue Officer or official making any wrong entry or issuing a false or incorrect report or certificate in respect of any State land, shall be liable to punishment which may extend up to five years of imprisonment and fine which may extend up to fifty thousand rupees by the Chief Judicial Magistrate having jurisdiction.”*

## **VI. ROSHNI ACT: A COMPENDIUM OF ILLEGALITIES**

### **Amendments in the Roshni Act**

Roshni Act, since its enactment, remained a controversial Act. Its provisions directly benefitted the occupants of the land. Even when it was amended twice in 2004 and 2007, it progressively benefitted the occupants only. For instance, the total land which could be vested at the time of its enactment was restricted to 10 canals only and the 2004 amendment increased this limit to 100 canals. Under Section 5(B) of the 2001 Act, occupants could get the ownership rights only if they had been in actual possession of the land during the period 1990 to the commencement of the Act. Later on, the 2004 amendment enabled all occupants who were in actual physical possession of the land in 2004 to get the ownership and it was relaxed to 2007 as well. Also, under Section 8(A), there was a prohibition on changing the usage of land after it was vested. On the contrary, under sub-section (2) of Section 8A, any occupant who desired to use agriculture land for any other purpose after it was vested could do so with permission from the Competent Authority on payment of the prescribed fee. An audit by the CAG has revealed that out of the actual transfer of around 3,48,200 kanals of land under the Roshni Act, the major portion of over 3,40,100 kanals has been transferred free of cost as agricultural land.<sup>5</sup> *Almost all possible illegalities were permitted under the Act and its amendments.*

### **J&K State Land (Vesting of Ownership to the Occupants) Rules, 2007**

An important aspect to note is that the J&K State Land (Vesting of Ownership to the Occupants) Rules, 2007 made by the Revenue Department under Section 18 of the impugned Act without the approval from the legislatures and were unauthorizedly published in the Government

---

<sup>5</sup> Para 37

Gazette. And these rules were in excess of the powers conferred by the Statute and in contradiction with the prohibitions.

Section 12 of the Act provides for the factors that are to be considered for price fixation which include potential value of the land, irrigation and transport facilities available and proximity to road or urban areas and the market value of the land. However, under the 2007 Rules, there was a scope for “differential pricing” depending upon the size of plot, category of occupants etc. It is arbitrary and favorable to nepotism. Also, Rule 13(IV) prescribed that land which was under agricultural use, would be vested in an occupant free of cost against the statutory prohibition. The same rules provide for the transfer of agriculture lands to the applicants who were in possession of the land for more than three years on the date of the application.

## **VII. JUDICIAL COURSE OF ROSHNI ACT**

Finally in 2011, a writ petition by way of a Public Interest Litigation was filed by Professor S.K. Bhalla on 17<sup>th</sup> August 2011. He was a renowned academician and the then Principal of the Government Degree College, Mendhar. In his petition, he pleaded for the constitution of an SIT to investigate into the allegations of land grabbing that he leveled against “influential people including police officers, politicians and bureaucrats occupying responsible positions in the erstwhile J&K State in connivance with land mafia”<sup>6</sup> The Jammu and Kashmir High Court called the object of the Act as something which “shacks the conscience” of the Court. A precept of the Statement of Objects and Reasons are given below:

"Whereas most of the State land stands encroached upon and is not presently being utilized for the purpose for which it was reserved at the time of regular settlement. These lands have either come under various types of construction or plantations including orchards. The eviction of these lands is very difficult if not impossible because of the procedure established under law whereunder an encroacher has to be given an opportunity of being heard before he is evicted. Moreover, the encroachers are entitled to file an appeal, review, revision and thereby the State will be involved in protracted litigation and ultimately no substantial achievement shall be made in removing the encroachments. The removal of encroachment en-block will also lead to mass unrest.

---

<sup>6</sup> Para 42

In view of the above, the Hon'ble Finance Minister proposed the scheme called "Roshni in his Budget Speech 2000 whereunder it was suggested that the Proprietary Rights be given to the persons holding unauthorizedly till 1990 on payment of the cost equivalent to the prevailing market rate of the year 1990."

The court held the Rules ultra vires the Roshni Act. The High Court referred to the judgement of the Supreme Court in *Jagpal Singh and Ors., Vs. State of Punjab*<sup>7</sup> which clearly laid out that the view that it is "not in public interest to dispossess a person who had unauthorizedly encroached" upon a land is erroneous. The State holds the public property in public trust. The High Court referred to the judgment to the judgement of the Supreme Court in *Sachidanand Pandey v. State of W. B*<sup>8</sup> in which the Supreme Court held that the "State-owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration". 'Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e., it should be for public purpose and in public interest. Invitation for participation in public auction ensures transparency and it would be free from bias or discrimination and beyond reproach.'<sup>9</sup>

The Court vehemently held the object of the enactment as completely "illegal and unacceptable". The "projected" object of the Act, that is, the funding the hydel projects out of the sale generated revenue was only an outward appearance of the object because no such purpose has been served. There is the missing element of evaluation of the cost benefit in the enactment of the law and the manner in which it has worked is "malafide". The Act and its Rules are arbitrary in the context of the prescribed mode of dispossession of valuable public property. And because of this arbitrariness and unfairness, the Act is in violation of Article 14 of the Constitution of India. Also, the provisions of the Act violate Article 21 of the Indian Constitution in view of the fact that "vesting of several lakhs of canals of public land to private ownership has resulted in such land not being available for public projects and infrastructure including hospitals, schools, parks etc. As a result, the rights to health, education, a good environment of the residents of Jammu & Kashmir, all of which are essential concomitants of their right to life guaranteed under Article 21 of the Constitution of India of the residents are

---

<sup>7</sup> (2011) 11 SCC 396

<sup>8</sup> (1987) 2 SCC 295

<sup>9</sup> (2007) 8 SCC 75 *Aggarwal & Modi Enterprises (P) Ltd. v. NDMC*



violated.”<sup>10</sup>

Because of the aforesaid reasons, the High Court of Jammu and Kashmir held that the “J&K State Land (Vesting of Ownership to the Occupants) Act, 2001 as also its amendments and J&K State Land (Vesting of Ownership to the Occupants) Rules, 2007 are completely unconstitutional, illegal, unjustified and void ab initio”.

## VIII. AFTERMATH

Since the High Court has directed the Commissioner to the Revenue Department to collect information regarding the details of the illegally occupied land, identity of the encroachers, number of applications received under the Act, orders passed under the Act, amounts paid by the beneficiary, details of the persons in whose favor the vesting was done, complete identity of all influential persons including ministers, bureaucrats, government officials, police officers and their relatives, the process is being proceeded. All the information has to be provided to the CBI which will hold inquiry into the matter and register cases against the persons who will be found culpable. In the furtherance of the Court decision, the government of the Union territory of Jammu and Kashmir has issued several notifications regarding the anti-encroachment drives which are underway in the UT. Currently, many review petitions against the JK High Court decision declaring the Roshni Act null and void are pending before the Court itself. The judgement of the High Court has also been challenged in the Supreme Court of India through an appeal pending before the Court.

## IX. CONCLUSION

William Shakespeare in one of his most famous tragic plays, *Macbeth*, said, “*look like th’ innocent flower, but be the serpent under’t*” which translates to ‘look like an innocent flower but be the venomous snake that hides under that flower and waits for a hand to touch the flower and bite it to death’. In these lines, Shakespeare meant that ‘one should look innocent while pursuing murderous plans’ or ‘carry a legal appearance if your object or motive is illegal, in order to accomplish the illegal object without any hindrance or repulsion’. The Act sought to transfer the ownership rights of state land to its occupants on the provisioned payment of certain cost which was to be determined by the government. The government while enacting the Act claimed that out of the revenue that would be generated by the costs paid by the occupants, spending would be done on commissioning hydroelectric power projects. The “projected” object of the Act, that is, the funding of the hydel projects out of the sale generated revenue was

---

<sup>10</sup> Para 39

only an outward appearance of the object because no such purpose has been served.

\*\*\*\*\*