

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

.....

WP(C) no.3250/2023

c/w

- (i) CCP no.570/2022
- (ii) WP(C) no.1275/2022
- (iii) WP(C) no.1276/2022
- (iv) WP(C) no.1277/2022
- (v) WP(C) no.1282/2022
- (vi) WP(C) no.1399/2022
- (vii) WP(C) no.1447/2022
- (viii) WP(C) no.1465/2022
- (ix) WP(C) no.1551/2022
- (x) WP(C) no.1729/2022
- (xi) WP(C) no.2225/2022
- (xii) WP(C) no.2710/2022
- (xiii) WP(C) no.2947/2022
- (xiv) WP(C) no.151/2023
- (xv) WP(C) no.540/2023
- (xvi) WP(C) no.671/2023
- (xvii) WP(C) no.696/2023
- (xviii) WP(C) no.1486/2023
- (xix) WP(C) no.1487/2023
- (xx) WP(C) no.1491/2023
- (xxi) WP(C) no.2131/2023
- (xxii) WP(C) no.2266/2023
- (xxiii) WP(C) no.2689/2023
- (xxiv) WP(C) no.2714/2023
- (xxv) WP(C) no.2779/2023
- (xxvi) WP(C) no.2846/2023
- (xxvii) WP(C) no.2859/2023
- (xxviii) WP(C) no.2886/2023
- (xxix) WP(C) no.2891/2023
- (xxx) WP(C) no.2940/2023
- (xxxi) WP(C) no.2972/2023
- (xxxii) WP(C) no.2973/2023
- (xxxiii) WP(C) no.2974/2023
- (xxxiv) WP(C) no.2975/2023
- (xxxv) WP(C) no.2976/2023
- (xxxvi) WP(C) no.2977/2023
- (xxxvii) WP(C) no.2978/2023
- (xxxviii) WP(C) no.2981/2023
- (xxxix) WP(C) no.2989/2023
- (xl) WP(C) no.3110/2023
- (xli) WP(C) no.3148/2023
- (xlii) WP(C) no.3285/2023
- (xliii) CCP(S) no.352/2023
- (xliv) CCP(S) no.1/2024
- (xlv) CCP(S) no.2/2024
- (xlvi) CCP(S) no.4/2024
- (xlvii) CCP(S) no.5/2024
- (xlviii) CCP(S) no.6/2024
- (xlix) CCP(S) no.7/2024
- (l) CCP(S) no.8/2024
- (li) CCP(S) no.9/2024
- (lii) CCP(S) no.10/2024
- (liii) CCP(S) no.11/2024

- (liv) WP(C) no.78/2024
- (lv) WP(C) no.215/2024
- (lvi) WP(C) no.921/2024
- (lvii) WP(C) no.994/2024
- (lviii) WP(C) no.1179/2024

Reserved on: 03.06.2024

Pronounced on: 08.08.2024

**Kirmania Model High School, Batwina, Ganderbal**

.....Petitioner(s)

**Versus**

**Union Territory of J&K and others**

.....Respondent(s)

a/w connected petitions.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE (ACTING)**

**JUDGMENT**

1. This batch of writ petitions (which are forty-eight in number) urges to declare Notification/S.O. 177 dated 15<sup>th</sup> April 2022 as ultra vires to the Constitution. Ancillary relief(s) are also being sought in these petitions.

These petitions are taken one by one.

**WP(C) no.3250/2023**

Kirmania Model High School Batwina v. UT of J&K and others  
Mr. Z.A.Shah, Senior Advocate with Mr Asif Feroz Bhat, Advocate for petitioner  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

2. Let me first take up the writ petition, WP(C) no.3250/2023, which is titled as *Kirmania Model High School Batwina, Ganderbal v. Union Territory of J&K and others*, in which the following reliefs are prayed to be granted:

- (a) That S.O. 177 dated 15.04.2022 be declared as ultra vires to the Constitution;
- (b) It be declared that Local Village Inhabitants have proprietary rights on Kahcharie/Shamilat Deh etc. land as the use of a portion of Kahcharie lands for public purpose of establishing a

school does not violate any law and the petitioner schools are entitled to continue in the present status.

- (c) It be also held that status of the land, on which the school is located, cannot be made basis of recognition or affiliation by the Government and/or by the State Board of School Education.
- (d) That by a writ of mandamus Government be directed to accord recognition to the petitioner school for 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> classes and the State Board of School Education be directed to grant affiliation to the petitioner schools for a period of 05 years from the date of expiry of the last affiliation in the same manner as has been done to other schools in terms of order no.03-Gen of 2023 dated 06.01.2023.
- (e) That by a writ of mandamus respondents be directed to admit the schools to the privileges and facilities of the State Board of School Education and be further directed to release/provide Registration Return (RR) forms to the petitioner schools and to allow online access to the petitioner schools to approach the State Board of School Education/Government/Authorities of Directorate of School Education and to accept fee etc. and to complete all the formalities as may be required to enable the students of 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> classes to take board examination as may be prescribed and as and when these are held.

**2.1.** Reply has been filed by the respondents. Their preliminary objection is about maintainability of the writ petition. According to them, policy decision of the Government is not open to challenge in a writ petition. As regards facts, it is stated by respondents that J&K School Education Act, enacted in the year 2002, provide for derecognition of school(s) under Section 16 thereof. J&K School Education Rules were issued in the year 2010, so as to implement various provisions of the Act of 2002. About impugned S.O. 177 of 2022, it is contended by respondents that in exercise of powers conferred by Section 29 of the Act of 2002, certain amendments have been made in the Rules of 2010. It is also contended that action taken by respondents is within their ambit of the Act of 2002 and amendments carried in the Rules of 2010 are not illegal. The respondents also contend that the intend of School Education Department is only to get the land record/document verified

by concerned Revenue authorities in order to check that private schools are having valid land documents and are legally entitled to run such private school and the buildings/lands are free from all legal encumbrances. It is also submission of respondents that amendments carried in terms of impugned notification is to help in running academic sessions of the students in a smooth way and in case of Revenue authorities taking over the possession of the State land from illegal occupants, the private schools shall not be disturbed and their land record shall be verified by recognition/affiliation authorities for the larger interest of the students studying in these private school/institutions. Besides, such a step will also check corruption and mushrooming growth of private schools and ensure transparency in the education sector.

- 2.2.** I have heard learned counsel for parties and considered the matter.
- 2.3.** As regards the case in hand, viz. WP(C) no.3250/2023, it is contention of petitioner that petitioner-school was initially started in the year 1984. It had been in terms of Government Order no.1401-Edu of 1993 dated 28<sup>th</sup> July 1993, that recognition was granted to petitioner-school up to 5<sup>th</sup> primary. By Government Order no.1444-Edu of 1994 dated 6<sup>th</sup> October 1994, recognition was granted up to 8<sup>th</sup> class. In 2001, recognition/ affiliation to run classes up to 9<sup>th</sup> and 10<sup>th</sup>/10+2 stage for a period of three years was approved by Sub-Committee of Recognition Committee of J&K Board of School Education. This was followed by issuance of Government Order no.703-Edu of 2004 dated 26<sup>th</sup> August 2004, according sanction to grant of recognition/affiliation up to class 10<sup>th</sup>. Further extension to recognition to petitioner-school was granted

vide Government Order no.846-Edu of 2013 dated 24<sup>th</sup> October 2013 up to Class 10<sup>th</sup>. Petitioner would contend that in terms of Order no.347-Aff of 2017 dated 21<sup>st</sup> April 2017, issued by J&K Board of School Education, affiliation was granted to petitioner-school for a period of five years from October 2016 to October 2021. While affiliation/upgradation was approved and granted vide Government Order no.184-Edu of 2017 dated 21<sup>st</sup> August 2017, petitioner-school was also granted such affiliation/ recognition inasmuch as petitioner-school figures at serial no.277 in the said government order. In terms of Order no.125-DSEK of 2002 dated 1<sup>st</sup> February 2022, Managing Committee of petitioner-school was approved. It is also contended by petitioner that Tehsildar, Wakoora, vide letter dated 6<sup>th</sup> September 2023 informed J&K BOSE of the fact that 02 Kanals 16 Marlas and 7 ½ Sirsai under Survey no.810, 811 min, 812 is recorded in the name of petitioner-school through Public Welfare Society Trust, Baghwanpora and to this extent Mutation no.1844 dated 10<sup>th</sup> May 2023 has been effected. Tehsildar Wakoora is also stated to have reported that petitioner-school was functional on Kahcharie land bearing no.725/1 of Estate Batwina on 20<sup>th</sup> May 2022 and at that time, no proprietary land was recorded in the name of petitioner-school, but, in the year 2023, Managing Committee of petitioner-school purchased proprietary land for the school which stands transferred in its name on 10<sup>th</sup> May 2023. Petitioner-school is stated to have started construction of building on a purchased proprietary land. Reference has also been made by petitioner to communication dated 25<sup>th</sup> October 2023 of Naib Tehsildar, who informed Tehsildar that petitioner-school is located on Mahfooz

Kahcharie but has been constructed by local villagers of Batwins decades ago and affairs of the school are run by Public Welfare Society, Baghwanpora and that a resolution was passed by Local Panchayat to the effect that Kahcharie land, on which school was established, be let out on lease basis to management of petitioner-school. 625 students are said to be on the rolls of petitioner-school. Petitioner has also relied upon a record-note to show that Deputy Commissioner, Ganderbal, held a meeting on 14<sup>th</sup> September 2023 in which the Committee found the case of petitioner-school genuine and, therefore, recommended for permission under change of land use after fulfilling conditions laid down in NOCs issued by line-departments.

- 2.4.** It may be mentioned in the above backdrop that petitioner-school has been started in the year 1984. It has been recognized in the year 1993 up to 5<sup>th</sup> primary and up to 8<sup>th</sup> in 1994. At that relevant point of time, the Primary Education Act, Samvat 1986, and J&K Private Educational Institutions (Regulation and Control) Act, 1967 and J&K Education Act, 1984 were in existence. These three Acts have been repealed by coming into being of the J&K School Education Act, 2002 (for short “*Act of 2002*”). Section 2 (f) of Act of 2002 says that “educational agency” means any individual, society, trust or body of persons registered with the government and permitted to establish, run or maintain any private school. Section 2(g) provides that “existing school” means any government school or government aided or recognized school established before commencing of the Act of 2002 and continuing as such at the time of such commencement. “Private School” is defined under Section 2(l), which says that it means a school

established, run or maintained by any educational agency and recognized by the Government. Section 2 (n) says a “school” means an educational institution primarily meant for imparting education up to and including the higher secondary level and includes such institutions as are meant for providing instructions and training for teacher and also includes lands, buildings, playgrounds, hostels and movable properties such as furniture, books, apparatus, map and equipment, owned by and used for the activities of the educational institution. Section 3 of the Act of 2002 provides that it shall apply to all the schools in J&K. Section 5 of the Act of 2002 envisions establishment of schools by the government and permission to any educational agency to establish and maintain private schools. Section 11 says that no private school shall be established, run or maintained without permission in writing of the government of competent authority and that the government shall prescribe procedure to be followed for grant of permission to establish, run or maintain private schools.

- 2.5. When we peruse Section 12 of the Act of 2002, it envisages that only such private schools as are recognized shall be permitted to function. Section 13 says that no private school shall be managed and run by any person other than an educational agency. Section 15 of the Act of 2002 provides that every private school shall have to seek prior permission of competent authority before adding any higher classes and any higher classes so added in a school shall require recognition by the government. Section 16 provides that the government may derecognize any private school if in its opinion functioning of such a school is not in accordance with the provisions of the Act and rules made thereunder.

However, no such order of derecognition shall be passed by the Government unless reasonable opportunity is provided to educational agency in this regard.

**2.6.** Section 18 of the Act of 2002 stipulates that any property or asset owned, held or acquired by any person for or on behalf of any private school, shall be deemed to be property of the educational agency notwithstanding that such property stands in the name of any individual. Section 29 provides that the government may make rules for the purpose of carrying into effect the provisions of the Act of 2002 including the matters which relate to the provisions of compulsory education; establishment and maintenance of schools; grant of permission to set up private schools; recognition of private schools; giving of grant-in-aid to schools; levy and collection of fees in private schools; manner in which accounts, registers and records shall be maintained and auditing of accounts of private schools; returns, statements and reports to be submitted by schools; inspection of schools; constitution and functioning of Local Area Education Committees; standards of education and courses of study; procedure for admission of students in schools; and any other matter which is or may be required to be prescribed under the Act.

**2.7.** It is in exercise of the powers conferred by Section 29 of the Act of 2002 that the Government of J&K made the J&K School Education Rules, 2010 (hereinafter referred to as the “*Rules of 2010*”) and notified it vide Notification/SRO 123 dated 18<sup>th</sup> March 2010. Its Rule 4 gives the procedure for registration of the private schools. It makes it known that upon receipt of the application for opening a private school, which



should be accompanied by no objection certificate from the Municipal Corporation/Committee, Panchayat, LAWDA or any other local body and/or any institution concerned as the case may be; traffic police; public works department (from the safety standpoint) and fire and emergency service department, the competent authority or any official/s authorized by him for the purpose shall within 15 days from the date of receipt of the application, refer the matter for spot inspection of the said institution or for examination of the project/proposal vis-à-vis the norms of infrastructure, equipment, staff and other requirements as laid down under Rules 5, 6 and 11 of the Rules of 2010, to an inspector to be appointed by him who shall not be below the rank of Joint Director in case of an ETT/NIT institution; Principal of a Government Higher Secondary School in case of High and Higher Secondary Schools; Headmaster of a Government High School in case of Elementary Schools (i.e., school running upto 8<sup>th</sup>); and Master of a Government in case of Pre-Primary Institution. The Inspector is required to submit the report to competent authority within a period of 30 days from the date of his appointment. Rule 6 says that private schools, seeking permission/ recognition or extension/renewal thereof, shall be required to have the requisite infrastructure and facilities including physical facilities and teaching and other staff as per the details enumerated in Rule 6.

- 2.8.** As can be seen in the case in hand, in terms of impugned S.O. 177 dated 15<sup>th</sup> April 2022, certain amendments have been made to the Rules of 2010. In Rule 4, after Sub-Rule (2A), the Rule (2B) has been added, which provides that the application shall be accompanied by no-

objection certificate regarding land use issued by the Revenue Department, Government of J&K; documents relating to possession of the land required for building, playground, etc. in case applicant is owner or a lease deed with a minimum period of 10 years, in case a private school is proposed to be run in a rented land/building; and documents as mentioned in clause (i) and (ii) in case of private schools already established shall be produced within a period as may be prescribed by the Government. In Rule, Sub-Rule (3), after clause (b), the clause (c) has been added which provides that a committee as may be constituted by the Director, School Education concerned, may inspect the land records of all private schools at any time.

**2.9.** In the case in hand, it is contention of petitioner that petitioner-school is protected by the decision delivered by the Supreme Court in *Jagpal Singh v. State of Punjab and others, (2011) 11 SCC 396*, for petitioner-school has been allowed by local community to use the land for purposes of the school which is under public interest.

**2.10.** The Supreme Court in *Jagpal Singh* (supra) has directed all the State Governments that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/ Poramboke/ Shamilat land and these must be restored to the Gram Sabha/Gram Panchayat for common use of villagers of the village and for this purpose, the Chief Secretaries of all State Governments/ Union Territories of India have been directed to do the needful, taking the help of other senior officers of the Government and the scheme should provide for speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal

occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning the illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases, e.g., where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/ Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

- 2.11.** A question has been put by petitioner “*whether amendment carried out in the Education Law, making existence of a private unaided school on Kahcharie etc. land as illegal, is irrational, arbitrary, or suffers from non-application of mind, or is under inclusive*”.

The clear-cut directions of the Supreme Court in *Jagpal Singh* (supra) deprecate the practice of usage of Kahcharie land for any other purpose. Kahcharie land is meant for a particular purpose, that is, for common purpose, which cannot be permitted to be deviated. It is true that regularization in exceptional cases might have been given but that does relate to landless labourers or members of SC/ST or where there is already a school, dispensary or other public utility on the land.

With respect to the petitioner-school, it cannot be said to be a public/government school but a “*private school*” and, therefore, does not come and fall within the ambit of exceptional cases.

- 2.12.** Another question raised by the petitioner is “*whether the existence of the school infrastructure on Kahcharie land is relevant for the purposes of carrying out the educational programme and activities*”.

This question is somehow alike to the above question. A private school in any manner cannot be treated and deemed as a government

school. So, existence of a private school infrastructure on Kahcharie land if permitted to operate, run, and continue, will only encourage unscrupulous elements to make use/misuse of such instances/examples to grab Kahcharie / common land.

- 2.13.** Third question put by the petitioner is “*whether educational activity is independent of the status of the land on which infrastructure of the school exists and, therefore, cannot be made a condition for grant of affiliation or recognition*”.

It is worthwhile to mention here that the instant question has already been answered while squaring-off above two questions.

One cannot close his eyes to the fact that the rampant growth of the private schools is an investment, which attracts everyone as it has become a lucrative business venture, although those private schools produce best of best. So, the conditions being imposed by the Governments for establishment, recognition, affiliation etc. cannot be termed or labelled as irrational, arbitrary or unreasonable.

- 2.14.** Fourth question raised by the petitioner is “*whether the use of the Kahcharie/Shamilat Deh/State/Auqaf etc. lands for running the private unaided schools, otherwise established by the local village community in the interest of the children of the village and of adjoining areas, is in public interest*”.

It may be mentioned that all religions say that education is must for human being. If an individual wants to do a good for human being, let him/her establish a school on his/her proprietary land or on a self-acquired land and provide free education.

It is startling that the land meant for grazing and/or common purpose is being utilized by certain individuals for personal/private purpose. Such acts should be dealt with iron hands.

Another answer to the present question is also that why private schools; why not a government schools on Kahcharie/State land.

**2.15.** Another question made by the petitioner is “*whether the recognition and affiliation of the private unaided schools for last several decades has the effect of the tacit consent of the Government authorizing establishment of these schools on Kahcharie etc. land to be lawful and, therefore, under no circumstances affiliation and recognition can be denied to these schools*”.

Answer to this question is that establishment of private schools on Kachcharie/common land ought not to have been permitted muchless allowed to continue by the then authorities/functionaries/departments and, therefore, such practice should be arrested by the Government.

Grant of affiliation/recognition to private school or schools, running, operating and functioning on Kahcharie land, should be stopped by the Government.

The State holds landed property in trust and for ultimate benefit of its citizens in general; thus, the State/Government is required to save, protect and preserve the Kahcharie/State land for the purpose for which it is meant for. So, a particular party cannot be permitted to reap special benefit from such property at the expense of the interest of the people at large. It was expected of respondents that they would have borne this

salutary principle in mind while bestowing any benefit upon an individual school.

The issue regarding discretionary allotment of plots by the Government was considered by the Supreme Court in *Akhil Bharatiya Upbhokta Congress v. State of Madhya Pradesh and others*, reported in (2011) 5 SCC 29. The Supreme Court was called upon to consider allotment of a plot without issuing advertisement or adopting a procedure consistent with the doctrine of equality so as to enable other similar organizations/institutions to participate in the process of allotment. It was opined that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities. The transparent method is to be followed in terms of a well-defined policy.

There cannot be any policy muchless a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions de hors an invitation or advertisement by the State or its agency/ instrumentality. By entertaining applications made by individuals, organizations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favoritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution. Finally, allotment of plot in

favour of the allottee was quashed by the Supreme Court. The relevant paragraphs thereof are advantageous to be reproduced below:

“31. What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

32. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

33. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the Society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article of the Constitution.

34. The allotment of land by the State or its agencies/instrumentalities to a body/organization/institution which carry the tag of caste, community or religion is not only contrary to the idea of Secular Democratic Republic but is also fraught with grave danger of dividing the society on caste or communal lines. The allotment of land to such bodies/organisations/institutions on political considerations or by way of favoritism and/or nepotism or with a view to nurture the vote bank for future is constitutionally impermissible.”

**2.16.** Another question that has come up in writ petition is “*whether amendments carried out in the Educational Law are prospective in nature and, therefore, have no application to the pre-existing private unaided schools*”.

**2.16.1.** Answer to this question is that it depends upon aims and objectives of every law. At times, some laws have prospective effect; some have retrospective effect; and some have retroactive effect.

**2.16.2.** Making new laws, incorporating amendments to the existing laws and repealing the old laws are need of hour. When there had not been computers, we could not have thought of Cyber Laws, Information Technology Laws. However, when the boom of the computers with the internet webbed the whole Globe, the unscrupulous elements simultaneously started committing the hacking, spamming, phishing, etc. causing financial loss, leakage of data, affecting commoner’s privacy, so it was thought imperative to legislate Cybersecurity Laws, Information Technology Laws etc.

**2.16.3.** As regards the case in hand, if the petitioner’s contention is accepted that the amendment has prospective effect, it would amount to opening a flood gate and giving freehand to unscrupulous elements to grab Kahcharie/State land and show that Kahcharie/common land is in their



possession since time immemorial. Such a practice and/or notion is unacceptable. The Government of J&K should not be loath and inert in implementation of the laws.

**2.16.4.** The concept of prospective effect, retrospective effect, and retroactive effect of rules pertains to how the legal provisions or changes in the law are applied concerning the events or the actions which occurred before or after the law was enacted. Qua prospective effect, a rule or law with prospective effect applies only to events or actions occurring after the rule or law has come into force. It does not affect any actions or situations that occurred before the rule or law was enacted. Most new laws are enacted with prospective effect to ensure they do not disturb settled expectations or existing rights and obligations. For instance, if a new tax law is passed, it will generally apply to financial transactions occurring after the date of its enactment.

**2.16.5.** Concerning retrospective effect, a rule or law with retrospective effect applies to events or actions that occurred before the law was enacted. This means it affects past events as if the law were in effect at that earlier time. In India, retrospective laws are generally not favoured because they can disrupt settled legal positions and create uncertainty. However, the legislature has the power to enact laws with retrospective effect if it explicitly states so. An example might be a law altering tax liabilities for past financial years. Courts will often scrutinize such laws to ensure they do not violate constitutional principles, such as the right to be heard or due process.

**2.16.6.** In relation to “retroactive effect”, term it is sometimes used interchangeably with “retrospective effect”, but it can also refer to a

broader application which might impact past, present, and future events. It essentially involves applying a legal provision to scenarios from before the law was enacted, but with broader consequences. The Courts typically interpret retroactive effect to mean any impact on past actions. However, the precise scope can vary based on the context and wording of the legislation.

**2.16.7.** In the backdrop of above, the legislative power to make law with retrospective effect is well recognized. It is also well settled that though the legislature has no power to sit over the Court's judgement or usurp the judicial power, but it has subject to competence to make law, power to remove the basis which led to the Court's decision. The legislature has power to enact laws with retrospective effect but has no power to change a judgement of the Court of law either retrospectively or prospectively. The Constitution clearly defines the limits of legislative power and judicial power. None can encroach upon the field covered by the other. The laws made by the legislature have to conform to the constitutional provisions. Every sovereign legislature possesses the right to make the retrospective legislation. The power to make laws includes power to give it retrospective effect.

**2.16.8.** In *Virender Singh Hooda v. State of Haryana*, AIR 2005 SC 137, the Supreme Court did not accept the contention of the writ petitioners therein that vested rights cannot be taken away by retrospective legislation. However, it was observed that taking away of such rights would be impermissible if there is violation of Articles 14, 16 or any other constitutional provision.

**2.16.9.** Retrospective or retroactive law takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past. It is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called small repairs. Moreover, the individual who claims that vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in retroactive curing of such a defect in administration of the Government outweighs the individual's interest in benefiting from the defect.

**2.16.10.** Impugned in the present writ petition and the concomitant petitions is S.O. 177, which reads as under:

“S.O.177.— In exercise of the powers conferred by section 29 of the Jammu and Kashmir School Education Act, 2002, the Lieutenant Governor hereby makes the following amendments in the Jammu and Kashmir School Education Rules, 2010, namely: -

1. In rule 4, after sub-rule (2A) the following sub-rule shall be added, namely: -  
“(2B). The application shall be accompanied by:-
  - i. no-objection certification regarding land use issued by the Revenue Department, Government of Jammu and Kashmir;
  - ii. documents relating to possession of the land required for building, playground, etc in case the applicant is the owner or a lease deed with a minimum period of 10 years, in case a Private School is proposed to be run in a rented land / building;
  - iii. documents as prescribed in clause (i) and (ii) above in case of a private school already established, shall be produced within a period as may be prescribed by the Government.”
2. In rule 4, sub rule (3), after clause (b), the following clause shall be added, namely:  
“(c) A committee as may be constituted by the Director School Education concerned may inspect the land records of all private schools at any time.”
3. Rule 9 shall be omitted.

“4. In Rule 12, in sub-rule (1), after the word, “derecognize”, the words, “de-recognize, and take over its management or both” shall be substituted.

5. In rule 12, after sub-rule (1), the following shall be added as sub-rule (2); namely:-

“(2) In cases, where the management of any school(s) is taken over by the Government under sub-rule(1) above, the teachers/staff working in said school(s) shall have no right/claim of regularization in the Department/ Government.”

**2.16.11.** Impugned S.O. 177, on its plain reading, shows that Subrule (2B) has been added after Subrule (2A) in Rule 4 of the Rules of 2010. It provides that application should be accompanied by no objection certificate regarding land use issued by Revenue Department. In case a private school is proposed to be run in a rented land/building, the application should also be accompanied with documents relating to possession of the land required for building, playground etc in case the applicant is owner or a lease deed with minimum period of ten years.

**2.16.12.** On its further perusal S.O. 177 provides that the private schools which are already established shall produce no objection certificate regarding land use issued by the Revenue Department and documents relating to the possession of the land required for building, playground etc. in case the applicant is owner or a lease deed with minimum period of ten years, within the period which may be prescribed by the Government.

**2.16.13.** During the course of the arguments, one of the learned counsel appearing for the petitioners in one of the writ petitions has contended that there are various schools against whom the notice/s have not been issued and have been got off scot-free by the respondents, although such schools are existing on the State/Kahcharie/Shamilat land. This contention cannot be a pretext to justify one wrong by another wrong.

**2.16.14.** Nonetheless, here the Government is required to follow homogeneousness. All the petitioners-schools herein have, almost, been given permission by respondent-school/board authorities to establish, run and function. Was not it the responsibility of respondent-authorities at that relevant point of time to ascertain whether the school(s) proposed to be established was/were being built/constructed on the land which is not permitted to be used for such purpose.

**2.16.15.** The cases in hand are not about an individual school, where respondent-authorities had been in inertia and/or having no awareness about building/constructing a building and running of a school. They are hundreds in number. These schools have been established under the nose of government authorities at the helm of affairs; they cannot be heard saying that they had no knowledge and/or they were unable to stop such schools to come up. Respondent-authorities, at the relevant point of time, have had men and machinery; they could have instantaneously stopped such schools to come up on State/Kahcharie land; they not only permitted them but also gave recognition/affiliation.

**2.16.16.** If that being the position, the respondents herein are required to apply same yardstick to all private schools.

**2.16.17.** Mr. Mohsin Qadri, learned Sr.AAG, has made a reference to the Order dated 15.04.2024, passed by a Bench of this Court in a writ petition, WP(C) No.772/2024 titled as *Ahmadiyya Public School, Reshinagar v. UT of J&K and others*, and has stated that in the said writ petition same grounds had been taken and same relief had been prayed as is prayed in the cases in hand, yet the Writ Court has dismissed the said writ petition.

**2.16.18.** The aforesaid order referred to by Mr Mohsin Qadri cannot be said to be an Euclid's theorem. The Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. The observations of the Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. The judgments of the Courts are not to be construed as statutes. To interpret the words, phrases and provisions of a statute, it may become necessary for the judges to embark into the lengthy discussions but the discussion is meant to explain and not to define. The Judges interpret statutes, they do not interpret the judgments. They interpret words of the statutes; their words are not to be interpreted as statutes. Reference in this regard is made to *Bharat Petroleum Corporation Ltd. & anr. v. N.R. Vairamani & anr.*, AIR 2004 SC 4778; *Sarva Shramik Sanghatana (K.V.), Mumbai v. State of Maharashtra and others*, AIR 2008 SC 946; *Government of Karnataka & ors v. Gowramma & ors*. AIR 2008 SC 863; *Deepak Bajaj v. State of Maharashtra*, AIR 2009 SC 628; and *Dangdhuran Hydro Power Consortium & anr. v. Chenab Valley Power Projects Pvt Ltd & ors*. 2017 SLJ 303.

**2.17.** Seventh question which has been made mention of in the writ petition is “*whether the respondents by operation of law are estopped from denying access to the private unaided schools to the facilities and privileges of the Board of School Education and/or release of Registration Return (RR) forms*”.

If the private schools fulfil the laws, rules and regulations governing the running, establishing, maintaining of the private schools, they are entitled to the facilities and privileges.

- 2.18.** The eighth question raised by the petitioner is “*whether the amendment carried out in the Education Act, 2002, Rules of 2010 or any other law have the effect of closing down the private unaided schools, which have been functional for last several decades on Kahcharie land and, thus, are violative of the provisions of Right to Education Act and Article 14, 19 and 21 of the Constitution*”.

First and foremost, the old/repealed laws, rules and regulations did not permit any person, or for that matter private schools, to raise constructions, superstructures and infrastructures on Kahcharie/ common land. It is made clear here that even if such laws, rules and regulations, usages, orders, directives, permit occupation of Kahcharie land for any other purpose except common purpose, such laws, regulations, usages, orders and directives are *per se* in derogation of the Constitution of India.

Education Act of 2002, Rules of 2010 and impugned S.O. 177 do not suffer from any infirmity or illegality, as such.

- 2.19.** The ninth question raised by the petitioner is “*whether the students, who have sought admission in the Private Unaided Schools existing on Kahcharie etc. land can be denied the education in such schools, thus, violating the right to the choice of the school of the students*”.

This question is irrational. An illegal activity of grabbing Kahcharie/State land cannot be given sympathetic colour by using the expression “*students*”. If a private school is established on Kahcharie

land, it is a misdemeanour. It cannot be condoned as it will have irretrievable ramifications.

The question put by petitioner, if taken in other words, means that the Government is not able to provide education to its citizens, which is not a fact.

If the Government would gear up, it can provide and/or is providing free education to its citizens, whether studying in government or private schools. Schemes for such purpose can be and/or are being formulated by the Government, *for*, that is not the big matter for the Government as it has highly qualified/expertized hands and skill, which can help it to come out of such situations.

**2.20.** As regards tenth question raised by the petitioner in the writ petition, it has already been set at rest herein before; besides it has been set at rest by the Supreme Court in its judgement dated 11<sup>th</sup> December 2023, passed in Writ Petition (Civil) No.1099 of 2019.

**2.21.** Again, question eleventh has been discussed and settled herein above.

**2.22.** Another facet of the matter is that petitioner herein has not thrown challenge to the Act of 2002 and the provisions contained therein which provide issuance of Rules and Regulations on the auspices of Act of 2002.

**2.23.** It is worth to add here that prior to dawn of computer technology, we had been using the blackboards and chinks in the classrooms. Now we have smart/e-boards and in place of chinks we have stylus/e-pens. Not only this, we had been and are even using today the traditional copy and pen, but as of now we are in transit from paper to paperless work. Earlier it was physical presence in class/offices, now simultaneously it



is virtual attendance. We had been laying foundation stone for a particular work by being physically present on the spot, but now we can lay foundation stone by virtual mode. If we have these facilities; there are ostensibly unprincipled elements who are bent upon to misuse such facilities. To quell such misdemeanours, new laws are very important to be legislated and enforced.

**Conclusion:**

**2.24.** It is pertinent to mention here that petitioner's stand in the instant writ petition is that he has acquired the proprietary land for running the school. If that being the position, let him accelerate the work for completion of the school building on the self-acquired/proprietary land expeditiously, preferably within six months. Till then he be permitted to run the school in the existing building. In the event petitioner is not able to complete the work within six months, he will be at liberty to either approach the respondents for extension of time or this Court. However, such extension shall not exceed one year from today.

**2.25. Disposed of as above.**

**WP(C) no.1275/2022**

Al Azhar School of Education and others v. UT of J&K and others  
Mr. Z.A.Shah, Senior Advocate with Mr Asif Feroz Bhat, Advocate for petitioner  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**3.** The present writ petition has been filed by as many as seventeen schools. They pray for grant of the following reliefs:

- (a) That it be declared that SO 177 dated 15.04.2022, amending Education Rules of 2010, is ultra vires to the Constitution and of no legal consequence.
- (b) By a writ of certiorari, the notification no.F(Gen-AFF)Offline/B-JK/ 2022 dated 16.04.2022 and the Circulars no.F(Gen-B)KD/22 dated 22.04.2022 and F(Gen-B)KD/22 dated 13.05.2022 be quashed.
- (c) By a writ of mandamus, the respondents be directed to accord registration/recognition to the petitioner schools as was being done

before issuance of impugned amendment of the rules, circulars/ notifications and the schools be allowed to operate and function without any demur from the respondents and without interfering in their internal autonomy or in their affairs.

(d) By a writ of mandamus, the respondents be directed to accord regularization of lands as regards the present holdings of the petitioner schools in accordance with law.

(e) By a writ of mandamus, the Jammu and Kashmir School Board of Education be directed to accept the requisite forms relating to the registration of the students who are required to or intend to appear in the board examinations of such classes of which the Board conducts examinations and to complete all formalities in this behalf and to declare results of candidates.

**3.1.** Reply has been filed by respondents.

**3.2.** In the present case, petitioner – Al Feroz English Medium Public School, Kehrote Kulgam, as shown in writ petition, has been established on *Shamilat Deh/Maqbooza Ahle Islam* land situated at Kahrote bearing Khasra no.71.

Petitioner – Sir Syed Memorial High School, Mahind, Anantnag, is being run on *Shamilat/Maqbooza Malikaan* land in village Kushroykalan.

As regards petitioner – Public School English Medium, Hakoora, Anantnag, is concerned, it has been established on *Shamilat Deh/ Mehfooz Kahcharai* land bearing Khasra no.01, situated at village Hakoora Badasgam, Anantnag.

Petitioner – Shahi Hamdan Public School, Mahandpora, Shopian, has been established on *Shamilat Deh/Maqbooza Malikaan* bearing Khasra no.363 situated at village Mohandpora Trenz.

Petitioner – Modern Trust of Education Brath Kalan Bomi, Baramulla is being run on *Shamilat Deh/Maqbooza Kahcharai* land.

Petitioner – English Medium Public School, Guloor, Langet has been established on *Shamilat Deh* land.

Petitioner – Badasgam Public School, Anantnag, has been established on *Shamilat Deh/Maqbooza Malikaan* land bearing Khasra no.1742, situated at village Hakoora Badasgam, Anantnag.

Petitioner – Sir Syed Memorial Institute Quimu, Kulgam is being run in *Shamilat Deh* land falling under Khasra no.86 situated at Village Wani Gund. Insofar as petitioner – Modern Public School Sangas,

Anantnag, is concerned, it is claimed to have been established in the year 1993 on *Shamilat / Maqbooza Malikan* land falling under Khasra no.698 situated at Shalagam.

Petitioner – Modern Public School, Shangas, Anantnag, has been established in the year 1993 on *Shamilat/Maqbooza Malikaan* land falling under Khasra no.698, situated at Village Shalagam.

Petitioner – English Medium Public School, Malmapanpora, Baramulla is claimed to be running since 1992 in *Shamilat/Maqbooza* land falling under Khasra no.1260 situated at Malmapanpora.

Petitioner school, namely, Islamic Era Public School Krangsoo, Mattan, Anantnag, is said to have been established in the year 1999 on *Shamilat Deh/ Maqbooza Kahcharai* land falling under Khasra no.697, situated at village Krungsoo Mattan.

Another petitioner school – Modern Public School Shalagam, Anantnag, has been established in *Shamilat Maqbooza Malikaan* land falling under Khasra no.698, situated at village Shalagam.

One more petitioner school – Morning Star Pub. HS, Karimabad, Pulwama, is stated to have been established in the year 1995 on *Maqbooza Malikan/Shamilat* land bearing Khasra no.1714.

Modern Public School Seer Hamdan, Anantnag has been established on *Maqbooza/Kahcharai* land falling under Khasra no.870, situated at Village Seer Hamdan, Anantnag.

Gazi Memorial Institute Soaf Shali Kokernag Anantnag has been established in the year 1992 on *Maqbooza/Sakheen* land bearing Khasra no.775, situated Village Soafshall, Kokernag.

Hanfia Model Institute, Mohammad Pora Tazipora, Kulgam, is said to have been established in the year 1966, on *Shamilat Deh/ Maqbooza Ahle Islam* land, falling under Khasra no.191, situated at village Tazipora.

Shaheen Public School, Ranipora, Anantnag, has been established in the year 1990 on *Maqbooza/Malikaan* falling under Khasra no.304 village Ranipora, Anantnag.

- 3.3. In the present writ petition, some schools have been established on Shamilat, Maqbooza Malikaan, Maqbooza Ahle Islam, and some on *Mehfooz Kahcharie* land.

**WP(C) no.1276/2022**

Al Feroz English Medium Public School and others v. UT of J&K & others  
Mr. Z.A.Shah, Senior Advocate with Mr Asif Feroz Bhat, Advocate for petitioner  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

4. In this petition, 17 petitioners-schools prays for grant of following reliefs:

- (a) That it be declared that SO 177 dated 15.04.2022, amending Education Rules of 2010, is ultra vires to the Constitution and of no legal consequence.
- (b) By a writ of certiorari, the notification no.F(Gen-AFF)Offline/B-JK/ 2022 dated 16.04.2022 and the Circulars no.F(Gen-B)KD/22 dated 22.04.2022 and F(Gen-B)KD/22 dated 13.05.2022 be quashed.
- (c) By a writ of mandamus, the respondents be directed to accord registration / recognition to the petitioner schools as was being done before issuance of impugned amendment of the rules, circulars/ notifications and the schools be allowed to operate and function without any demur from the respondents and without interfering in their internal autonomy or in their affairs.
- (d) By a writ of mandamus, the respondents be directed to accord regularization of lands as regards the present holdings of the petitioner schools in accordance with law.
- (e) By a writ of mandamus, the Jammu and Kashmir School Board of Education be directed to accept the requisite forms relating to the registration of the students who are required to or intend to appear in the board examinations of such classes of which the Board conducts examinations and to complete all formalities in this behalf and to declare results of candidates.

- 4.1. Objections/para wise reply has been filed by respondents.

- 4.2. In the instant writ petition, some schools have been established on Shamilat Deh, Maqbooza Malikaan, Maqbooza Ahle Islam, and some on *Mehfooz Kahcharie* land.

**WP(C) no.1277/2022**

Hamdania Science School and others v. UT of J&K & others  
Mr. Z.A.Shah, Senior Advocate with Mr Asif Feroz Bhat, Advocate for petitioner  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

5. In the instant writ petition, there are twenty-one petitioner-schools who have knocked at portals of this Court seeking vouchsafe of the following reliefs:

- (a) That it be declared that SO 177 dated 15.04.2022, amending Education Rules of 2010, is ultra vires to the Constitution and of no legal consequence.
- (b) By a writ of certiorari, the notification no.F(Gen-AFF)Offline/B-JK/ 2022 dated 16.04.2022 and the Circulars no.F(Gen-B)KD/22 dated 22.04.2022 and F(Gen-B)KD/22 dated 13.05.2022 be quashed.
- (c) By a writ of mandamus, the respondents be directed to accord registration/recognition to the petitioner schools as was being done before issuance of impugned amendment of the rules, circulars/ notifications and the schools be allowed to operate and function without any demur from the respondents and without interfering in their internal autonomy or in their affairs.
- (d) By a writ of mandamus, the respondents be directed to accord regularization of lands as regards the present holdings of the petitioner schools in accordance with law.
- (e) By a writ of mandamus, the Jammu and Kashmir School Board of Education be directed to accept the requisite forms relating to the registration of the students who are required to or intend to appear in the board examinations of such classes of which the Board conducts examinations and to complete all formalities in this behalf and to declare results of candidates.

5.1. Reply has been filed by respondents.

5.2. In the instant writ petition as well, the details of schools and kind of land over which the said school run and function have been enumerated in paragraph 07. Some of the schools are running on *Maqbooza Khalsa, Maqbooza Sarkar, Bashardgani Deh, Shamilat Deh, Maqbooza Yateem Trust, Maqbooza Masjid Sharief/Auqaf, SDA land, Maqbooza UHP land, Maqbooza Panchayat, Maqbooza Flood Control, Maqbooza Dev. Authority*, and some are on *Kahcharie land*.

**WP(C) no.1282/2022**

J&K Private Schools Association and others v. UT of J&K and others  
Mr. Z.A.Shah, Senior Advocate with Mr Asif Feroz Bhat, Advocate for petitioner.  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

6. In the instant writ petition, eighty-five petitioners/schools seek the same relief which has been sought in writ petitions, viz. WP(C) nos.1276/2023, 1277/2023. Same set of facts and grounds have been urged as have been exhorted in aforementioned writ petitions.

6.1. Reply has been filed by respondents.

**WP(C) no.1399/2022**

M/s Mehboob ul Alam Public Middle School v. UT of J&K and others  
Mr. M.S.Reshi, Advocate for petitioner.

Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

7. In the instant writ petition, petitioner-school, which has been established in *Kahcharai land*, prays for grant of following reliefs:

- I) S.O. 177 dated 15.04.2022 issued by respondent no.1 amending the Education Rules 2010, be declared ultra vires to the constitutional mandate and of no legal consequence.
- II) By issuance of an appropriate writ, order or direction, one in the nature of certiorari, quashing the impugned Circular dated 22.04.2022 issued by respondent no.2.
- III) By issuance of an appropriate writ, order or direction, one in the nature of mandamus, directing the respondents to accord registration/ recognition to the petitioner school as was being done before issuance of the impugned amendment of the rules, circular/ notifications.
- IV) By issuance of an appropriate writ, order or direction, one in the nature of mandamus, the respondents 3 and 4 be restrained from pressurizing the petitioner to close down the institution forthwith and issue discharge certificates to the enrolled students but to allow the petitioner school to operate and function without any hindrance from the respondents and without interfering in the internal autonomy or in their affairs.
- V) By issuance of an appropriate writ, order or direction, one in the nature of mandamus, directing the respondents to accord regularization of land as regard the present holding of the petitioner school in accordance with law.
- VI) By issuance of an appropriate writ, order or direction, one in the nature of mandamus, directing the Board of School Education, Kashmir, Srinagar, to accept the requisite forms relating to the registration of the students who are required to or intend to appear in the Board Examination of such classes of which the Board conducts examinations and to complete all formalities in this behalf and to declare results of candidates.

7.1. Reply has been filed by respondents.

**WP(C) no.1447/2022**

Al Noor English Medium Public School Lalpora Lolab v. UT of J&K and others  
Mr. M.A.Wani, Advocate for petitioner  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

8. In the writ petition on hand, the petitioner – school is running on Kahcharai land falling under Survey no.4742. The petitioner prays to declare SO 177 dated 15.04.2022, amending Education Rules of 2010, as ultra vires to the Constitution and of no legal consequence and quash the notification no.F(Gen-AFF)Offline/B-JK/ 2022 dated 16.04.2022 and the Circulars no.F(Gen-B)KD/22 dated 22.04.2022 and F(Gen-B)KD/22 dated 13.05.2022. The petitioner also seeks a direction upon respondents to accord registration/recognition to the petitioner school as was being done before issuance of impugned amendment of the rules, circulars/ notifications and the schools be allowed to operate and function without any demur from the respondents and without interfering in their internal autonomy or in their affairs.

8.1. Reply/objections have been filed by respondents.

8.2. In the present case as well, petitioner-school is being run on *Kahcharai land*.

**WP(C) no.1465/2022**

Jamiat-us-Sualihaat v. UT of J&K and others  
Mr. Z. A. Qureshi, Senior Advocate with Ms Rehana, Advocate for petitioner.  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

9. On the edifice of case set up, the petitioner prays to quash communication no.DSEK/GS/54/MISC/2834 dated 13<sup>th</sup> June 2022 to the Principal Secretary to Government, School Education Department and order passed by Deputy Secretary to Government, School Education Department, on the recommendations of Director, School Education Kashmir, vide communication no.EDU-BOSE/37/2022-01

dated 14<sup>th</sup> Jun 2022, and in consequence thereof, allow petitioner-school to continue, manage the school without any interference of any kind whatsoever in pursuance of the recognition given to the petitioner-school vide annexure to the Government Order no.1706-Edu of 2021 dated 15<sup>th</sup> December 2021 upto October 2025. Director, School Education, is sought to be directed to accept the requisite forms relating to the registration of the students of the petitioner-school who are required or intend to appear in the Board Examination of 9<sup>th</sup> to 12<sup>th</sup> classes of which the J&K State Board of School Education conducts the examination and complete all the formalities in this behalf and to declare the result of the candidates. Quashment of notification no.F(Fen.AFF)/offline/B-JK/2022 dated 16<sup>th</sup> April 2022 and Circulars no.F(Gen-B)KD/22 dated 22.04.2022 and F(Gen-B)KD/22 dated 13<sup>th</sup> May 2022 is also sought. SO 177 dated 15<sup>th</sup> April 2022 is prayed to be declared ultra vires the Constitution.

- 9.1. Petitioner-school claims that the school is being run in *Shamilat land* which was already in possession of Auqaf.
- 9.2. Reply has been filed by respondents.

**WP(C) no.1551/2022**

Azad Education and Research Trust and another v. UT of J&K and others  
Mr. R.A.Jan, Senior Advocate with Mr Ubaid Mir, Advocate for petitioner.  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

10. Declaration of notice dated 9<sup>th</sup> October 2021 issued by respondent no.6 under Section 133 and 133 (c) of the Land Revenue Act, as void *ab initio* and *non est* in law is sought. A prayer for quashing notice dated 9<sup>th</sup> October 2021 is also prayed for. A direction upon respondents is also sought to be passed to treat impugned action of respondents vide



impugned notice dated 9<sup>th</sup> October 2021 as non-est in law. Respondents 1 to 5 are sought to be desisted, refrained and forbear from giving effect and/or acting or proceeding in further of impugned notice dated 9<sup>th</sup> October 2021 in any manner prejudicial to the constitutionality guaranteed rights of petitioner-Trust and the Education Institution (School) as well as against the mandate of Section 133-J of the Land Revenue Act. Petitioner also prays to direct respondents 1 to 5 treat petitioner Trust and Education Institution in the matter of regularization of land measuring 17 Kanals approximately similarly and on par with Educational Institutions forming in law one class with petitioner Trust and thereupon land be regularized on the terms and conditions Kahcharie/State land has been regularized in favour of Educational Institutions forming in law one class with petitioner Trust and Educational Institution.

- 10.1.** As can be seen from perusal of writ petition, petitioner no.2-school has been established in the year 2005. It has been in terms of Resolution dated 12<sup>th</sup> July 2022 that Mian Shamas Jalal, one of the Trustees of petitioner no.1-Trust, has been authorized to file writ petition on hand. Petitioners admit that they are in possession of 17 Kanals of land bearing Survey no.1026 min underneath and appurtenant to the Educational Institution at Humhama Budgam.
- 10.2.** It is a contention of petitioners that a building was already in existence in the land and they were misled to believe that land underneath and appurtenant thereto was proprietary land. Petitioners rely on a document, viz. Sale Deed dated 3<sup>rd</sup> October 2005, that according to them has been executed by seller in their favour.

Perusal whereof divulges that seller, namely, Rafi Ahmad Bhat, had been owner of land measuring 02 Kanals 03 Marlas under Survey no.809, Khata no.390, Khewat no.79 along with a school complex constructed on it situated at village Humhama Budgam, which he sold to petitioners.

**10.3.** It is made clear here that petitioners' claim is that they are in possession of 17 Kanals, but any layman can see and say that petitioners have by virtue of Sale Deed purchased only 02 Kanals 03 Marlas of land. However, while perusing Annexure (page 46 & 47), it comes to fore that Tehsildar, Budgam, has reported that petitioner-school is in possession of *Kahcharie land* measuring 16 Kanals; with respect whereof proprietary land measuring 16 Kanals has been offered by petitioner-school. So, it is within the powers and domain of respondents to consider the case of petitioner for exchange of proprietary land in place of Kahcharie land.

**WP(C) no.1729/2022**

Arshad Memorial Foundation (Trust) v. U.T. of J&K and others  
Mr M.A.Ganai, Advocate  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**11.**In this writ petition as well, same reliefs are being sought and prayed for which have been solicited in abovementioned writ petitions, viz. quashing SO 177 dated 15<sup>th</sup> April 2022 as also Notification F(Gen-B)KD/22 dated 22.04.2022 and F(Gen-B)KD/22 dated 13<sup>th</sup> May 2022, and directing respondents to accord/renew registration/recognition to petitioner-school as was done before issuance of impugned amendment of the rules, SO 177, circulars and

petitioner-institute be allowed to operate and function without any interference from the respondents and without interfering in the internal autonomy of petitioner's school/institute.

**11.1.** Reply has been filed by respondents.

**11.2.** Petitioner claims that petitioner-school is built on *Abadi Deh land*.

**WP(C) no.2225/2022**

Azad Education and Research Trust and another v. UT of J&K and others  
Mr. R.A.Jan, Senior Advocate with Mr Ubaid Mir, Advocate for petitioner.  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**12.** Petitioners-schools pray to declare impugned action of respondent no.2 dated 30<sup>th</sup> July 2022 rejecting application of petitioner no.1 for extension of already granted recognition/affiliation to petitioner institution, illegal to the extent of being non-est in law. They also seek quashing of memo dated 30<sup>th</sup> July 2022 and directing respondents 1, 3 to 6 to treat impugned action of respondent no.2 rejecting application of petitioner for extension of already granted recognition/affiliation to petitioner no.2, void *ab initio* and *non est* in law. Petitioners also pray to direct respondents 1, 3 to 5 to desist refrain and forbear from giving effect thereto and/or acting on the basis thereof in any manner prejudicial to the rights of guaranteed under Chapter VIII of the Regulations 1992 to the petitioner no.2 in the matter of extension of already granted recognition/affiliation. Respondent no.2 is also sought to be directed to submit the case of petitioner no.2 to Recognition/Affiliation Committee for reconsideration in accord with mandate of Chapter VIII of the Regulations 1992, for the purposes of extension/renewal of already granted recognition/affiliation to

petitioner no.2 institution. Respondent no.2 is also sought to be directed to extent the petitioner in particular petitioner no.2 the treatment in the matter of extension/renewal of affiliations similar and on par extended to schools forming in law one class with petitioner no.2 institution. Petitioners seek to direct respondent no.2 to reconsider the case of petitioners and on such reconsideration, the already granted recognition/affiliation vide order no.347-Aff of 2017 dated 21<sup>st</sup> April 2017 to the Management of petitioner no.2 school and give all the benefits/facilities/privileges to petitioner no.2 extendable in law to petitioner no.2 school on extension of recognition/affiliation so accorded/granted by the Recognition/ Affiliation Committee of the respondent no.2.

**12.1.** Reply has come up from respondents.

**12.2.** Petitioners herein have already filed a writ petition, being WP(C) no.1551/2022.

**WP(C) no.2710/2022**

Islamic Educational Institutional Institute and others v. UT of J&K and others

Mr. Bhat Fayaz, Advocate for petitioner.

Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**13.** Petitioners-schools pray to direct respondents to ensure that petitioners are being allowed to operate their institutions in accordance with the permission granted to them earlier in point of time, with a further direction to issue formal NOCs in favour of petitioners notwithstanding the status of the land and that respondents may be directed to ensure that students are not deprived from appearing in the examinations. A direction is sought in the name of respondents to explain as to how SO

177 dated 15<sup>th</sup> April 2022 is being made applicable to petitioners or in alternative SO 177 may be quashed.

**13.1.** Reply has been filed by respondents.

**13.2.** It is admitted position of petitioners that they are running the schools on *State land*.

**WP(C) no.2947/2022**

New Cambridge School v. UT of J&K and others  
Mr. Tasaduk Hussain Reshi, Advocate for petitioner.  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**14.**Writ of certiorari, quashing Order No.64 Gen of 2022 dated 16<sup>th</sup> December 2022 passed by respondent no.3 for tagging of on roll students of SSE (Class 10<sup>th</sup>) of New Cambridge School, Nehama, Kulgam, is prayed for by petitioner. Writ of mandamus, commanding respondents to grant extension in the period of affiliation for five years upto 10<sup>th</sup> Class w.e.f. Academic Session November 2021 to October 2026 to the petitioner school, is also sought. Petitioner also prays passing of writ of mandamus, commanding respondents to grant access to the link for submission of online examination forms for Class 10<sup>th</sup> Annual (Regular) Examination 2023 to the petitioner school.

**14.1.** Reply has been filed by respondents.

**14.2.** Insofar as present writ petition is concerned, petitioner-school is required to follow and comply rules, regulations, and terms and conditions being imposed by the authorities qua running of the school.

**WP(C) no.151/2023**

Alnoor English Medium Public School v. UT of J&K and others  
Mr. M. A. Wani, Advocate for petitioner.  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**15.**Petitioner-school, as is claimed in the writ petition on hand, had been established in the year 1998 on State land allotted to his father and

uncles and thereafter the school was shifted upon *Kahcharie land* comprising Survey no.4742. On the edifice of case set up, petitioner prays to direct respondent no.2 to extend provisional registration in favour of the school till the issue is resolved, with a further direction to respondents to conduct examination of Class 8<sup>th</sup> which is scheduled to be held in March 2023. Petitioner also prays to direct respondent-ZEO to countersign the certificates of outgoing students of the school.

**15.1.** Reply has been filed by the respondents.

**WP(C) no.540/2023**

Hanfia Islamic Educational Institute v. UT of J&K and others

Mr. P.S.Ahmad, Advocate for petitioner.

Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**16.** Petitioner seeks quashment of public notice no.CEO/A/PVT/114161-69/23 dated 10<sup>th</sup> March 2023, in terms of which petitioner-school has been virtually closed by impressing upon parents of the wards of the school to get their wards admitted in other institutions for new academic session – 2023-24 as according to respondent no.3, recognition of petitioner-school has expired, and consequent upon the said public notice, all the proceedings initiated or likely to be initiated for withdrawing the wards from the school be kept in abeyance. Writ of prohibition restraining respondents from closing/seizing the petitioner-school run and operated by him under the name and style of Hanfia Islamic Educational Institute, situated at Salia Panchalpora, Anantnag, falling in the Educational Zone Mattan District Anantnag and not to deprive petitioner from its ownership and possessory rights, is also sought. Petitioner also prays for writ of mandamus commanding respondents to process and finalize the renewal recognition case of

petitioner-school run and operated under the name and style of Hanfia Islamic Educational Institute, Salia, Panchalpora, Anantnag, in terms of the application of petitioner and documents submitted by him and acknowledged by respondents.

- 16.1.** Reply has been filed by respondents, in which they state that as per information available in the Directorate, petitioner-school has not applied through online mode as details of school are not available on its portal. As and when petitioner-school applies for recognition/affiliation or extension in the period of affiliation/recognition or upgradation, same will be examined and decided on its own merits.

**WP(C) no.671/2023**

Khakania Childrens Model High School v. UT of J&K and others  
Mr. G. Q. Bhat, Advocate with Mr Rizwan Bhat, Advocate for petitioner.  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

- 17.** Petitioner prays to quash public notice no.CEO/A/Pvt./114161-69/23 dated 10<sup>th</sup> March 2023, issued by respondent-Chief Education Officer, Anantnag, to the extent of petitioner-school, namely, Khakania Childrens Model High School, Furrah, whereby parents of wards enrolled in petitioner-school have been informed to get their wards admitted in nearby Govt./recognized Private institutions from the commencement of new academic session (2023-24) to save the academic career of enrolled students and mail dated 4<sup>th</sup> March 2023 issued by Directorate of School Education, Kashmir, whereby application filed by petitioner for renewal/extension of affiliation/recognition has been rejected. Petitioner prays to direct respondents to consider application submitted by petitioner for

extension/renewal of period of affiliation and recognition without any further delay, with further direction to respondents to regularize the land falling under Survey no.237 measuring 02 Kanals 02 Marlas in favour of Khakania Childrens Model High School, Furrah, in terms of policy dated 16<sup>th</sup> August 2010. Petitioner also seeks a writ of mandamus, commanding respondents to renew/extend the period of affiliation/recognition of petitioner-school or maintain status quo on spot with respect to the school of petitioner is concerned.

**17.1.** Reply has been filed by respondents.

**WP(C) no.696/2023**

Hyderia Model High School v. UT of J&K and others  
Mr. Lone Altaf, Advocate for petitioner.  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**18.** Petitioner prays to quash notice no.DIPK-18422/22 dated 16<sup>th</sup> March 2023, issued by respondent no.5 to the extent same pertains to petitioner-school. Writ of mandamus is also sought to be issued directing respondents to extend affiliation/recognition of petitioner-school in accordance with law governing the field without any further delay and that respondents may also be directed to allow petitioner-school to run its classes and give exams along with other schools without any prohibition on petitioner-school.

**18.1.** Reply has been filed by respondents.

**18.2.** Perusal of impugned notice dated 16<sup>th</sup> March 2023 reveals that petitioner-school has not obtained recognition beyond the expiry of previous recognition/affiliation.

**WP(C) no.1486/2023**

Islamia High School, Pampore v. UT of J&K and others  
Mr. G.Q.Bhat, Advocate with Mr. Rizwan Bhat, Advocate for petitioner.



Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**19.** Petitioner prays to quash notice GGHSS/P/2263 dated 19<sup>th</sup> May 2023, wherein the respondents have directed petitioner-school to submit necessary documents and other relevant no objection certificates in default that the school of petitioners be closed and the students studying therein be shifted to nearest government school and impugned notice bearing No.F(GEN-AFF/OFFLINE)B/JD/2022 dated 16<sup>th</sup> April 2022 wherein it has been directed to get no objection certificate regarding land use from the concerned revenue department. Petitioners also prays to direct respondents, by way of writ of mandamus, to consider application submitted by petitioner for extension/renewal of period of affiliation and recognition without any further delay. Writ of mandamus is also prayed for by petitioner to direct respondents to renew/extend the period of affiliation/recognition of petitioner-school or maintain status quo on spot with respect to the school of petitioner, with a further direction upon respondents to allow petitioner to run the school under the name and style of Islamia High School on spot without any interference.

**19.1.** Reply has been filed by respondents.

**WP(C) no.1487/2023**

Hamdaniya Mission School Pampore v. UT of J&K and others  
Mr. G.Q.Bhat, Advocate with Mr. Rizwan Bhat, Advocate for petitioner.  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**20.** Quashment of notice GGHSS/P/2263 dated 19<sup>th</sup> May 2023, wherein the respondents have directed the petitioner-school to submit the necessary documents and other relevant no objection certificates in default the school of petitioners be closed and the students studying therein be

shifted to the nearest government school as also notice bearing No.F(Gen-Aff/Offline)B/JD/2022 dated 16<sup>th</sup> April 2022 wherein it has been directed to get no objection certificate regarding the land use from the concerned revenue department. Petitioners also prays to direct the respondents, by way of a writ of mandamus, to consider the application submitted by the petitioner for extension/renewal of period of affiliation and recognition without any further delay, is prayed for. Writ of mandamus is also prayed for by petitioner to direct respondents to renew/extend the period of affiliation/recognition of petitioner-school or maintain status quo on spot with respect to the school of petitioner, with a further direction upon respondents to allow petitioner to run the school under the name and style of Islamia High School on spot without any interference.

**20.1.** Objections/para wise reply has been filed by respondents.

**WP(C) no.1491/2023**

Al Noor Model School v. UT of J&K and others

Mr. Z.A.Shah, Senior Advocate with Mr Asif Feroz Bhat, Advocate for petitioner  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**21.**The petitioner prays for grant of the following reliefs:

- (a) That by writ of mandamus, the respondents be directed to forthwith issue/grant No Objection Certificate to petitioner school in terms of Rule 2 (B) of Rule 4 of J&K School Rules, 2010 and notification no.F(Gen-Aff/Offline)8/JK/2022 dated 16.02.2022 in accordance with format (Annexure A) appended to the said notification.
- (b) That upon grant of the relief at (A) above, the respondents be directed to renew/grant extension in the recognition/affiliation of the petitioner school.
- (c) The upon grant of aforesaid reliefs, the respondents be directed to provide the petitioner school registration forms to enable it to complete the formalities required for the students who intend to appear in the Board Examinations as and when they are held and after they are duly registered by the respondent no.4.

**21.1.** Reply has been filed by respondents.

**21.2.** In the present case, the petitioner-school is being run since 1998 on a proprietary land. The petitioner-school is stated to have been granted affiliation as also recognition for running classes up to class 10<sup>th</sup>.

**21.3.** Petitioner, as can be grasped from perusal of file, prays for a direction to respondents to issue NOC in favour of petitioner-school.

**WP(C) no.2131/2023**

Hanfia Islamia Education Trust and others v. UT of J&K and others  
Mr. Z.A.Shah, Senior Advocate with Mr Asif Feroz Bhat, Advocate for petitioner  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**22.**In the writ petition in hand, the constitutional validity of S.O.177 dated 15<sup>th</sup> April 2022 amending Education Rules 2010 followed by notifications / circulars, is challenged and declaration thereof as violative of Article 41 and 46 of the Constitution of India, is sought.

Declaration is also sought to the effect that policy of government in reclaiming *Shamilat land* mostly in remote areas of the Union Territory of J&K be declared null and void. Petitioners also pray to pass writ of mandamus commanding respondents to regularize permissive possession of petitioners to the respective portions of land held by them in continuous and uninterrupted and long possession allotted to them by respective panchayat/village committee and also to issue requisite use certificate to the Governing body of petitioner no.2 to 10. A writ of mandamus is also sought to command Director, School Education, to extend recognition of the schools run by the Trust including petitioners 2 to 10 run irrespective of the description of the portions of the land under and appurtenant to the respective schools, particulars whereof are given in Annexure III to the petition.

**22.1.** Respondents have filed objections/para-wise reply.

**WP(C) no.2266/2023**

Iqbal Public High School Vessu and others v. UT of J&K and others  
Mr. Bhat Fayaz, Advocate for petitioner  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**23.**Writ of mandamus commanding respondents to ensure that petitioners are being allowed to operate their institution in accordance with the permission granted to them earlier in point of time, is sought in this writ petition. Petitioners also seek respondents to be directed to issue formal NOCs in favour of petitioner-school notwithstanding the status of the land, with further direction to respondents not to deprive petitioner-institution from recognition/registration on the strength of SO 177 dated 15<sup>th</sup> April 2022 which is not applicable to petitioners or in alternative SO 177 dated 15<sup>th</sup> April 2022 be quashed.

**23.1.** Objections have been filed by respondents.

**WP(C) no.2689/2023**

Iqbal Public High School Vessu and others v. UT of J&K and others  
Mr. Bhat Fayaz, Advocate for petitioner  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**24.**Petitioners seek quashing of S.O. 177 dated 15<sup>th</sup> April 022 issued by respondent no.1. petitioners also pray to pass writ of mandamus commanding respondents to ensure that petitioners are being allowed to operate their institution in accordance with the permission granted to them earlier in point of time. Petitioner also seeks respondents to be directed to issue formal NOCs in favour of petitioner-school notwithstanding the status of the land, with further direction to respondents not to deprive petitioner-institution from recognition/registration on the strength of SO 177 dated 15<sup>th</sup> April 2022 which is not applicable to petitioners or in alternative SO 177 dated 15<sup>th</sup> April 2022 be quashed.

**24.1.** Objections have been filed by respondents.

**24.2.** Petitioners admit running of the school on *State Land*, which fact is shown in revenue records as well.

**WP(C) no.2714/2023**

Salfia Muslim Educational & Research Trust v. UT of J&K & others  
Mr. Z.A.Shah, Senior Advocate with Mr Asif Feroz Bhat, Advocate for petitioner  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**25.** Petitioner-school prays for passing of the following reliefs:

- (a) That it be declared that S.O 177 dated 15.04.2022, amending SRO 123 (Jammu and Kashmir Education Rules, 2010), are prospective and do not apply to the existing schools.
- (b) That respondents in terms regulation of 1992 are bound to release R.R. forms to the petitioner school so as to enable the students of 9<sup>th</sup> & 10<sup>th</sup> Class to seek the registration with the Board of School Education.
- (c) Further, by a writ of mandamus, the respondents be directed to release all the facilities to the petitioner school online such as Migration Certificate, Renewal of Registration, Countersigning of Registration and Certificates etc.

**25.1.** Objections/para wise reply, the respondents have filed in opposition to the writ petition

**25.2.** In the instant writ petition, it is admitted position of petitioner that the school has been established in the year 1989 on land measuring 09 Kanals 08 Marlas and 40 sqfts recorded as Shamilat Deh Mehfooz Kahcharie under Survey no.765 of Estate Baghat Barzulla Tehsil Chanapora/ Nattipora, Srinagar.

**WP(C) no.2779/2023**

Rehmania Public School and others v. UT of J&K & others  
Mr. Jehangir A Ganai, Sr. Advocate with Mr Murfaat Naseem, Adv. for petitioner  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**26.** This writ petition is jointly filed by forty schools. Their prayer which they seek to be granted on the foundation of the case set up, is that respondent Board may be directed to release the registration return (RR) Forms to petitioner-schools so as to enable the students of 9<sup>th</sup> and 10<sup>th</sup> class enrolled in petitioner-schools to seek registration

with respondent Board, with a further direction to respondents to release all the online facilities to the petitioner schools.

**26.1.** Objections/para wise reply has been filed by respondents.

**26.2.** According to petitioners, they have already approached this Court with afore-numbered writ petitions viz. WP(C) nos. 1275/2022, 1276/2022, 1277/2022 and 1282/2022. Thus, it is admitted position of petitioners that the schools are being run on *Shamilat/Kahcharie* land.

**WP(C) no.2846/2023**

City School, Anantnag, and others v. UT of J&K & others  
Mr. Z.A.Shah, Sr. Advocate with Mr Asif Feroz Bhat, Adv. for petitioners  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**27.** This writ petition is filed by as many as thirteen schools. They entreat passing of the following reliefs:

- (a) That SO 177 dated 15.04.2022, be declared ultra vires to the Constitution.
- (b) It be declared that Local village inhabitants have proprietary rights on Kahcharie/Shamilat Deh etc. land and the use of a portion of Kahcharie lands for public purpose of establishing a school does not violate any law and the petitioner schools are entitled to continue in the present status.
- (c) It be also held that status of land, on which the school is located cannot be made basis of recognition or affiliation by the Government and/or by the State Board of School Education.
- (d) That by a writ of mandamus, Government be directed to accord recognition to the petitioner school for 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> classes and the State Board of School Education be directed to grant affiliation to the petitioner schools for a period of 05 years from the date of expiry of the last affiliation in the same manner as has been done to other schools in terms of order no.03-Gen of 2023 dated 06.01.2023.
- (e) That by a writ of mandamus, respondents be directed to admit the schools to the privileges and facilities of the State Board of School Education and be further directed to release/provide Registration Return (RR) forms to the petitioner schools and to allow online access to the petitioner schools to approach the State Board of School Education/Government/Authorities of Directorate of School Education and to accept fee etc. and to complete all the formalities as may be required to enable the students of 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> classes to take board examination as may be prescribed and as and when these are held.

**27.1.** Objections have been filed by respondents.

27.2. This writ petition is similar to the one which has been filed by Mr. Z.A. Shah, Senior Advocate, that is, WP(C) no.3250/2023.

27.3. The present writ petition shall also be regulated and governed by the directions passed in WP(C) no.3250/2023.

**WP(C) no.2859/2023**

Iqbal Islamia Mission High School v. UT of J&K & others  
Mr. M. Sultan, Advocate for petitioners  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

28. Quashing of S.O. 177 dated 15<sup>th</sup> April 2022 is sought for by petitioner as also Notification no.F(Gen/AFT/offline/B-JK/2022 dated 16<sup>th</sup> April 2022 along with circulars issued by respondent Board of School Education, Kashmir Division is prayed for by petitioner. Writ of mandamus is also sought, commanding respondents to grant affiliation to petitioner-school to fulfil all the requisite formalities to appear in ensuing examinations.

28.1. Objections have been filed by respondents.

28.2. It is stated by petitioner that petitioner-school is a private unaided school, established in the year 1997 and is housed in a three storeyed building, which is raised on a proprietary land covered under survey no.4873/3550 of Revenue Estate Kral Sanger, Brane, Nishtat, Srinagar, which falls in the ownership of Smt. Raj Kumari D/o Yuvraj Karan Singh. According to petitioner, it approached Tehsildar concerned for grant of NOC, who failed to issue it although the case of petitioner-school is on much higher pedestal because the school is raised on a proprietary holding.

**WP(C) no.2886/2023**

M/s Hanfiya Islamiya Model High School, Sehpora, Ganderbal v. UT of J&K and others  
Mr. M.S.Reshi, Advocate for petitioner.  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

29. In the instant writ petition, petitioner-school, which has been established in *Kahcharai land*, measuring 30 Kanals 11 Marlas falling under Khasra no.379 situated at Sehpora, Ganderbal, prays for grant of following reliefs:

- (a) S.O. 177 dated 15.04.2022 issued by respondent no.1 amending the Education Rules 2010, be declared ultra vires to the constitutional mandate and of no legal consequence.
- (b) By issuance of an appropriate writ, order or direction, one in the nature of certiorari, quashing the impugned Circular dated 22.04.2022 issued by respondent no.2.
- (c) By issuance of an appropriate writ, order or direction, one in the nature of mandamus, directing the respondents to accord registration/ recognition to the petitioner school as was being done before issuance of the impugned amendment of the rules, circular/ notifications in future as well.
- (d) By issuance of an appropriate writ, order or direction, one in the nature of mandamus, the respondents 3 and 4 be restrained from pressurizing the petitioner to close down the institution forthwith and issue discharge certificates to the enrolled students but to allow the petitioner school to operate and function without any hindrance from the respondents and without interfering in the internal autonomy or in their affairs.
- (e) By issuance of an appropriate writ, order or direction, one in the nature of mandamus, directing the respondents to accord regularization of land as regard the present holding of the petitioner school in accordance with law.
- (f) By issuance of an appropriate writ, order or direction, one in the nature of mandamus, directing the Board of School Education, Kashmir, Srinagar, to accept the requisite forms relating to the registration of the students who are required to or intend to appear in the Board Examination of such classes of which the Board conducts examinations and to complete all formalities in this behalf and to declare results of candidates.

29.1. Reply has been filed by respondents.

**WP(C) no.2891/2023**

M/s Islamiya Hanfiya Model High School, Harran, Ganderbal v. UT of J&K and others

Mr. M.S.Reshi, Advocate for petitioner.

Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

30. In the instant writ petition, petitioner-school, which has been established in *Kahcharai land*, measuring 30 Kanals 11 Marlas falling



under Khasra no.379 situated at Sehpora, Ganderbal, prays for grant of following reliefs:

- a) S.O. 177 dated 15.04.2022 issued by respondent no.1 amending the Education Rules 2010, be declared ultra vires to the constitutional mandate and of no legal consequence.
- b) By issuance of an appropriate writ, order or direction, one in the nature of certiorari, quashing the impugned Circular dated 22.04.2022 issued by respondent no.2.
- c) By issuance of an appropriate writ, order or direction, one in the nature of mandamus, directing the respondents to accord registration/ recognition to the petitioner school as was being done before issuance of the impugned amendment of the rules, circular/ notifications in future as well.
- d) By issuance of an appropriate writ, order or direction, one in the nature of mandamus, the respondents 3 and 4 be restrained from pressurizing the petitioner to close down the institution forthwith and issue discharge certificates to the enrolled students but to allow the petitioner school to operate and function without any hindrance from the respondents and without interfering in the internal autonomy or in their affairs.
- e) By issuance of an appropriate writ, order or direction, one in the nature of mandamus, directing the respondents to accord regularization of land as regard the present holding of the petitioner school in accordance with law.
- f) By issuance of an appropriate writ, order or direction, one in the nature of mandamus, directing the Board of School Education, Kashmir, Srinagar, to accept the requisite forms relating to the registration of the students who are required to or intend to appear in the Board Examination of such classes of which the Board conducts examinations and to complete all formalities in this behalf and to declare results of candidates.

**30.1.** Reply has been filed by respondents.

**WP(C) no.2940/2022**

Iqbal Public High School, Vessu, Anantnag v. UT of J&K and others  
Mr. Bhat Fayaz, Advocate for petitioner.  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**31.** Petitioner prays that by writ of mandamus, respondents may be commanded to release the Registration Return (RR) Forms to petitioner-school in order to enable Class 9<sup>th</sup> and 10<sup>th</sup>, to seek registration with the Board of School Education subject to Regulations of 1992. Petitioner also seeks grant of Writ of mandamus, commanding respondents not to create any hindrance in issuance of Registration

Return (RR) Forms of petitioner-school and ensure that same are released in favour of petitioner-school before the cut-off date. Writ of mandamus, commanding respondents not to deprive the students of petitioner-school from appearing in 9<sup>th</sup> and 10<sup>th</sup> class examinations.

**31.1.** Reply, as usual in other cases, has also been filed by respondents in instant matter.

**31.2.** It is admitted position of petitioners that they are running the schools on *State land*.

**WP(C) nos.2972/2023; 2974/2023; 2975/2023; 2977/2023; 2978/2023; 2981/2023; 2989/2023; nbd 3110/2023**

Sheikh-ul-Alam Public School Achabal Sopore v. U.T. of J&K & ors  
Mr. Z.A.Shah, Sr. Advocate with Mr Asif Feroz Bhat, Adv. for petitioners  
Mr Mohsin Qadiri, Sr.AAG with Ms. Maha Majeed, assisting counsel.

**32.**In these writ petitions, relief prayed for by petitioners-schools is akin to the relief sought in writ petition, viz. WP(C) nos.3250/2023 and 2846/2023.

**32.1.** Objections in all these writ petitions have been filed by respondents.

**32.2.** These writ petitions are similar to the one which has been filed by Mr. Z. A. Shah, Senior Advocate, that is, WP(C) no.3250/2023.

**32.3.** The present writ petitions shall also be regulated and governed by the directions passed in WP(C) no.3250/2023.

**WP(C) no.3148/2023**

Educational Trust Kashmir, Alamgiri Bazar v. U.T. of J&K and others  
Mr. M.Y.Bhat, Advocate  
Mr Mohsin Qadri, Sr.AAG with Ms Maha Majeed, assisting counsel.

**33.**Petitioner-school seeks a direction upon respondents to renew registration/revalidation of petitioner-school as was being done since decades and the school be allowed to operate and function without any demur from respondents and without interfering in their internal

autonomy or in their affairs. Petitioner also prays to direct respondents to accord recognition/affiliation to petitioner-school and release the Registration Return Forms in favour of petitioner-school, with a further direction to respondents to accord regularization of lands as regards present holdings of the petitioner-school in accordance with law. J&K Board of School Education is sought to be directed to accept the requisite forms relating to the registration of the students who are required to or intend to appear in the board examinations of such classes of which the Board conducts examinations and to complete all formalities in this behalf to declare results of candidates.

**33.1.** Objections/para wise reply has been filed by respondents.

**33.2.** It is evident from pleadings in petition, that petitioner-school is being run on the land which is of the kind of *Shamilat Deh* and *Mehfoozi Kahcharai*.

**WP(C) no.3285/2023**

Hyderia Model High School, Tulmulla v. U.T. of J&K and others  
Mr. Sheikh Younis, Advocate  
Mr Mohsin Qadri, Sr.AAG with Ms Maha Majeed, assisting counsel.

**34.** Petitioner-school seeks a direction upon respondents to renew registration/revalidation of petitioner-school as was being done since decades and the school be allowed to operate and function without any demur from respondents and without interfering in their internal autonomy or in their affairs. Petitioner also prays to direct respondents to accord recognition/affiliation to petitioner-school and release the Registration Return Forms in favour of petitioner-school, with a further direction to respondents to accord regularization of lands as regards present holdings of the petitioner-school in accordance with law. J&K

Board of School Education is sought to be directed to accept the requisite forms relating to the registration of the students who are required to or intend to appear in the board examinations of such classes of which the Board conducts examinations and to complete all formalities in this behalf to declare results of candidates.

**34.1.** Objections/para wise reply has been filed by respondents.

**34.2.** It is evident from pleadings in the present writ petition, that petitioner-school is being run on the land which is of the kind of *Shamilat Deh* and *Mehfoozi Kahcharai*.

**Conclusion:**

**35.** Almost, all that was required to be discussed, observed, viewed and opined has already been done hereinbefore while disposing of the aforementioned writ petition, WP(C) no.3250/2023. In that writ petition, the petitioner has acquired proprietary land.

**35.1.** Insofar as the other writ petitions, where the schools are being run on Kahcharie/State/Shamilat etc. land are concerned, the petitioners therein can either acquire the proprietary land and/or approach the respondent-authority (Principal Secretary to Government, Department of School Education, U.T. of J&K/J&K Board of School Education) with their plea as is made by them in their respective writ petitions for consideration which can also include the exchange of proprietary land in lieu of Kahcharie/State/Shamilat etc. land, as may be available under and in terms of the Land Revenue Act or any other applicable law(s). All these requests/applications shall be made by petitioners within four weeks from today. Principal Secretary to Government, Department of School Education, U.T. of J&K/J&K Board of School Education, on receipt of such application(s), shall decide the same either himself/itself or by constituting a Committee, comprising of senior officers of the School Education Department/J&K Board of School Education, Revenue Department or any other department(s) as may be thought appropriate by him/it, and get such applications decided within four months. While doing so, the petitioner(s) shall also be heard.

**35.2.** It is made clear here that in the event any of the writ petitioners makes the same proposal as has been made by the petitioner in WP(C) no.3250/2023, such a case will be governed and regulated by the directions passed hereinabove in WP(C) no.3250/2023. Till then petitioner(s) be permitted to run the school(s) provided they are able to do so having regard to change of circumstances during pendency of instant matter as the students studying in those schools have been shifted to other schools.

**35.3.** With regard to the writ petitions/cases, where Kahcharie/State/Shamilat land etc. is not involved, they (writ petitioners therein) can also approach Principal Secretary to Government, Department of School Education, U.T. of J&K/J&K Board of School Education, with their request/plight within four weeks from today. On receipt of such application(s), he/it shall either himself/itself decide or get such application(s) decided through the Committee, to be constituted by him/it, within a period of four months and while doing so, petitioner(s) shall also be heard. Till then petitioner(s) be permitted to run the school(s) provided they are able to do so having regard to change of circumstances during pendency of instant matter as the students studying in those schools have been shifted to other schools.

**35.4. Disposed of** as above along with connected CM(s).

**35.5.** In view of above, the proceedings are dropped and contempt petitions are **closed**.

(Tashi Rabstan)  
Chief Justice (Acting)

SRINAGAR

08.08.2024

'Madan Verma-Secy'

Whether the order is reportable: Yes/No.