HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Reserved on :10.04.2023

Pronounced on : 20.12.2023

Case:- OWP No. 901/2017
IA No. 1/2017

1. **Rajesh Kumar Basandhi, Advocate, Age 54 years, S/o Late Sewak Ram, Resident of Flat No. V-404, Jaipuria Sunrise Greens, VIP Road, Zirakpur, Tehsil Derabassi, District SAS Nagar (Mohali), Punjab-140603.**
2. **Om Prakash Sehgal alias Om Prakash, Advocate, Age 77 years, S/o Late Sewak Ram, R/o Flat Nno. 2148-GF-MIG, Sector-66, SAS Nagar (Mohali), Punjab-160062. Through his SPA, Rajesh Kumar Basandhi, Advocate Age 54 years, S/o Late Sewak Ram, Resident of Flat No. V-404, Jaipuria Sunrise Greens, VIP Road, Zirakpur, Tehsil Derabassi, District SAS Nagar (Mohali), Punjab-140603.**

…..Petitioners

Through: Petitioner in person

Vs

1. **Union of India, through the Home Secretary to Government of India, Ministry of Home Affairs, North Block Central Secretariat, New Delhi – 110001.**
2. **The State of Jammu & Kashmir, through the Commissioner/Secretary to Government of Jammu & Kashmir, Department of Disaster Management, Relief, Rehabilitation & Reconstruction, Civil Secretariat, Jammu – 180001.**
3. **The Provincial Rehabilitation Officer (PRO), Jammu, Government of Jammu & Kashmir, 595 A, Gandhi Nagar, Jammu, Jammu & Kashmir – 180004.**

…..Respondents

Through: Mr. Suneel Malhotra, CGSC
Mr. Vishal Bharti, Dy. AG

Case:- OWP No. 1026/2017
IA No. 1/2017

1. **Rajinder Kumar, age 69 years, S/o Late Karam Chand, R/o H. No. 103, Shivalik Enclave, Landra Road, Landra, Tehsil Kharar, District SAS Nagar (Mohali), Punjab-140301.**
2. **Atma Ram, age 59 years, S/o Late Chuni Lal, R/o H. No. C 1414, Patti Boora, Dakha, Ludhiana, Punjab – 141102.**
3. **Joginder Pal Gupta, age 69 years, S/o Late Dhera Ram, R/o H. No. 208, New Model Town, Near Kochar Market, Ludhiana, Punjab – 141002.**
4. **Ram Lal Gupta, age 81 years, S/o Late Mul Raj, R/s H. No. 49/31, Behind Gulmohar Hotel, Harpal Nagar, Ludhiana, Punjab-141001.**
5. **Devinder Gupta, age 51 years, S/o Late Vidya Rattan Gupta, R/o H. No. 328, Block D, Model Town Extension, Model Town, Ludhiana, Punjab-141002.**
6. **Om Prakash Sehgal alias Om Prakash, Advocate, age 77 years, S/o Late. Shri Sewak Ram, R/o Flat No. 2148-GF-MIG, Sector-66, SAS Nagar (Mohali), Punjab-160062.**
7. **Ashish Gupta, age 41 years, S/o Late Surendra Chunilal Gupta, R/o Gupta Niwas, V. P. Road, Mulund West, Mumbai-400080.**
8. **Sanjeev Kumar, age 45 years, S/o Late Hukam Chand, Tika Bani, Yol Cantt., Tehsil Dharamshala, District Kangra, Himachal Pradesh.**
9. **Ratan Lal Sehgal, age 67 years, S/o Late Ram Lal, H. No. 1, Lane No. 3, Ajit Colony, Camp Gol Gujral Road, Jammu – 180002.**

…..Petitioners

Through: Mr. Rajesh Kumar Basandhi, Advocate

Vs

1. **Union of India, through the Home Secretary to Government of India, Ministry of Home Affairs, North Block Central Secretariat, New Delhi – 110001.**
2. **The State of Jammu & Kashmir, through the Commissioner/Secretary to Government of Jammu & Kashmir, Department of Disaster Management, Relief, Rehabilitation & Reconstruction, Civil Secretariat, Jammu – 180001.**
3. **The Provincial Rehabilitation Officer (PRO), Jammu, Government of Jammu & Kashmir, 595 A, Gandhi Nagar, Jammu, Jammu &**

Kashmir- 180004.

…..Respondents

Through: Mr. Suneel Malhotra, CGSC
Mr. Vishal Bharti, Dy. AG

Case:- OWP No. 1215/2017
IA No.1/2017

1. **Pankaj Kumar Gupta, age 50 years, S/o Late. Ravinder Nath Gupta, R/o F-687, Bharat Nagar, Rehari Colony, Jammu.**
2. **Girish Yogendra Gupta, age 43 years, S/o Late. Yogendra Ramlal Gupta, R/o Caspia 1403, Joy Homes, Near Dena Bank, LBS Road, Bhandup West, Mumbai, Maharashtra – 400078.**
3. **Ram Nath Chadhi, S/o Late. Pishori Lal, R/o H. No. 82, Shopping Centre, Bakshi Nagar, Jammu, Jammu & Kashmir-180001.**
4. **Rajeev Maini, age 49 years, S/o Late Sat Pal Maini, R/o H. No. 176, Mirpur Colony, Pathankot, Punjab.**
5. **Sanjeev Kumar, S/o Late Chuni Lal, R/o H. No. 209, Shopping Centre, Bakshi Nagar, Jammu.**
6. **Ravinder Kumar, age 61 years, S/o Late Tara Chand, R/o WZ-311, Tihar Village, New Delhi – 110018.**
7. **Praveen Chander, age 70 years, S/o Late Dev Raj Sharma, R/o H. No. B-730, Sainik Colony, Sector-49, Fridabad, Haryana-121001.**
8. **Ashok Kumar, age 61 years, S/o Late Krishan Lal Gupta, R/o H. No. 309, Rehari Colony, Jammu.**
9. **Ram Anand, age 81 years, S/o Late Nand Ram, R/o H. No. 37, Trikuta Lane 2, Sector-1, Durga Nagar, Roopnagar, Jammu, Jammu & Kashmir-180013.**
10. **Rakesh Kumar, age 43 years, S/o Late Ganda Ram, R/o Ashok Nagar, New Delhi.**
11. **Nirmala Devi, W/o Late Brij Lal, R/o Plot No. 70, Shopping Centre, Bakshi Nagar, Jammu.**
12. **Ishan Sethi, age 29 years S/o Late Harish Chander, R/o Plot No. 97, Resham Ghar Colony, Jammu.**
13. **Chandraprakash Pritamchand Gupta, age 65 years, S/o Late PritamchandSohanlal Gupta, R/o Block C-46, Room 171, Ulhasnagar-3, District Thane, Maharashtra.**

14. **Harbhajan Singh, age 80 years, S/o Late Ram Singh, R/o D-201, Sushna Elite Cross, Dhakoli, Gazipur, Zirakpur, District SAS Nagar (Mohali), Punjab-140603.**
15. **Keemat Lal, age 71 years, S/o Late Mohan Lal, R/o 6902, Gali No. 12, New Janta Nagar, Shimla Puri, Millerganj, Ludhiana-141003.**
16. **Harbans Singh, age 71 years, S/o Late Prem Singh, R/o 71-B, Matto Colony Ext., Trikuta Nagar, Jammu.**
17. **Gurbachan Singh, age 82 years, S/o Harmohinder Singh R/o 94/2, Model Town, Gangyal, Jammu- 180010.**
18. **Om Prakash, age 77 years, S/o Late Daulat Ram, R/o H. No. 96, Ward No. 6, Vijaypur, District Samba, Jammu & Kashmir.**
19. **Subhash Kumar, 67 years, S/o Mast Ram, R/o 549, JanipurLakkar Mandi, Line No. 4, Jammu.**
20. **Raj Kumar, age 56 years, S/o Late Ved Rattan, R/o Village Dhangri, Tehsil & District Rajouri, Jammu & Kashmir-185131.**
21. **Madan Lal Sharma, 60 yeaers, S/o Late Chuni Lal, 4702, Roshanara Road, Near Nirankari Bhawan, Sabzi Mandi, Malka Ganj, New Delhi – 110 007.**

…..Petitioners

Through: Mr. Rajesh Kumar Basandhi, Advocate

Vs

1. **Union of India, through the Home Secretary to Government of India, Ministry of Home Affairs, North Block Central Secretariat, New Delhi – 110001.**
2. **The State of Jammu & Kashmir, through the Commissioner/ Secretary to Government of Jammu & Kashmir, Department of Disaster Management, Relief, Rehabilitation & Reconstruction, Civil Secretariat, Jammu – 180001.**

…..Respondents

Through: Mr. Suneel Malhotra, CGSC
Mr. Vishal Bharti, Dy. AG

Case:- OWP No. 1561/2017
IA No. 1/2017

1. **Devi Chand Gupta, age 65 years, S/o Late Malik Ram, R/o 293,**

Bakshi Nagar, Jammu.

2. **Kewal Krishan, age 54 years, S/o Late Ramesh Chander, R/o 431, Sarwal Chowk, Jammu.**
3. **Suresh Chander, S/o Late Jagan Nath, age 75 years, R/o 102, Adarsh Colony, Udhampur, Jammu & Kashmir.**
4. **Netar Parkash, age 78 years, S/o Late Nand Lal, R/o C-13, Sector 9, Rohini, New Delhi -85.**
5. **Vinod Kumar Chadha, age 54 years, S/o Shri Satpal Chadha, R/o Flat No. 3, Block O, Arya Apartment, Sector-15, Rohini, New Delhi – 110089.**

…..Petitioners

Through: Mr. Rajesh Kumar Basandhi, Advocate

Vs

1. **Union of India, through the Home Secretary to Government of India, Ministry of Home Affairs, North Block Central Secretariat, New Delhi – 110001.**
2. **The State of Jammu & Kashmir, through the Commissioner/Secretary to Government of Jammu & Kashmir, Department of Disaster Management, Relief, Rehabilitation & Reconstruction, Civil Secretariat, Jammu – 180001.**
3. **The Provincial Rehabilitation Officer (PRO), Jammu, Government of Jammu & Kashmir, 505 A, Gandhi Nagar, Jammu, Jammu & Kashmir – 180004.**

…..Respondents

Through: Mr. Suneel Malhotra, CGSC
Mr. Vishal Bharti, Dy. AG

Case:- OWP No. 1615/2017
IA No. 1/2018

1. **Harbans Singh S/o Shri Khem Singh, age 64 years, R/o H. No. 683, Street Non.5, Tripuri Town, Patiala.**
2. **Harbhajan Singh S/o Late Shri Bhagwant Singh, age 73 years, R/o H.No. 487, Street No. 2, Tripuri Town, Patiala.**
3. **Jaswant Singh, S/o Late Shri Moti Singh, age 68 years, R/o H. No. 991, Street No. 13, Tripuri Town, Patiala.**

4. **Khusbir Singh, S/o Late Shri Narian Singh, age 64 years, R/o H. No. 995, Street No. 13, Tripuri Town, Patiala.**
5. **Gurmit Singh, S/o Late Shri Santa Singh, age 59 years, R/o Village Malimajra, Post Office Saran District Yamuna Nagar, Haryana.**
6. **Harnam Singh, S/o Late Shri Karam Singh, age 76 years, R/o Village and Post Office Mustafabad, District Yamuna Nagar, Haryana.**
7. **Roshan Singh S/o S. Darshan Singh, age 72 years, R/o Village Chharba, Post Office Sahaspur, District Dehradun, Uttrakand.**

…..Petitioners

Through: Mr. K. S. Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate.

Vs

1. **Union of India, through Secretary, Ministry of Home Affairs, Jai Singh Road, New Delhi – 110001.**
2. **State of Jammu & Kashmir through Chief Secretary, Civil Sectt., Srinagar.**
3. **State of Jammu & Kashmir through Commissioner/Secretary, Department of Revenue, Civil Secretariat, Srinagar.**

…..Respondents

Through: Mr. Suneel Malhotra, CGSC
Mr. Vishal Bharti, Dy. AG

Case:- OWP No. 1822/2017
IA No. 1/2017

1. **Mirpur Ballidan Bhawan Samity, 1, Block, Lajpat Nagar-1, Near Jal Vihar Bus Terminal, Lajpat Nagar, New Delhi – 110024 through its President Dr. Sudesh Rattan.**
2. **Dr. Sudesh Rattan, age 72 years, S/o Late Dr. Kundan Lal Gupta, 91, New Rajdhani Enclave, New Delhi.**
3. **Shyam Sunder Gupta, age 63 years, S/o Late Shri Jagdish Kumar, 1-F/159 Lajpat Nagar, New Delhi – 110024.**
4. **Madan Mohan Gupta, age 65 years, S/o Late Shri P. L. Gupta, R/o 1-G/7, Lajpat Nagar, New Delhi – 110024.**
5. **Bawa Kapoor, age 55 years, S/o Late Shri Girdhari Lal Kapoor, R/o**

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

1-F/146, Lajpat Nagar, New Delhi – 110024.

6. **Varun Kumar Goswami, age 62 years, S/o Shri Amar Nath Goswami, H-7, Patel Marg, Ghaziabad U.P.**
7. **Shri Ram Gupta, age 81 years, S/o Shri Nanak Ram, R/o 115, Mirpur Colony, Pathankot, Punjab.**
8. **Asha Rani, age 75 years, W/o Shri Pran Nath, R/o 53, Mirpur Colony, Pathankot, Punjab.**
9. **Dinesh Chander, age 51 years, S/o Shri Sri Ram, R/o 117, Mirpur Colony, Pathankot, Punjab.**
10. **Manmohan Kumar, age 55 years, S/o Shri Barkat Ram, R/o 117, Mirpur Colony, Pathankot, Punjab.**
11. **Om Prakash Gupta, age 72 years, S/o Shri Nanak Chand, R/o 119, Mirpur Colony, Pathankot, Punjab.**
12. **Sandeep Raju, age 55 years, S/o Shri Brij Mohan, R/o 40, Mirpur Colony, Pathankot, Punjab.**
13. **Vishal Mahajan, age 35 years, S/o Shri Vijay Mahajan, R/o Village & PO Sidhpur, Kangra, Himachal Pradesh.**
14. **Rajinder Singh, age 44 years, S/o Late S. Sohan Singh, R/o Village & PO, Yol Bazar, Kangra, Himachal Pradesh.**
15. **Jagmohan Gupta, age 60 years, S/o Shri Krishan Lal, R/o Village and Post Office, Khanyara, Kangra, Himachal Pradesh.**
16. **Arun Kumar, age 64 years, S/o Shri Rajnder Kumar, R/o Village & PO Khanyara, Kangra, Himachal Pradesh.**
17. **Subash Gupta, age 71 years, S/o Shri Barkat Ram, R/o Village & PO, Sidhpur, Kangra, Himachal Pradesh.**
18. **Vijay Mahajan, age 64 years, S/o Shri Rajinder Nath, R/o Village & PO Dishpur, Kangra, Himachal Pradesh.**
19. **Tirath Ram, age 69 years, s/o Shri Lal, Das, R/o Bus Stand, Delhi Meat Corner, Dalhousie, Chamba, Himachal Pradesh.**
20. **Sanjay Kumar, age 47 years, S/o Late Shri Bodh Raj, R/o Yol Bazaar, Kangra, Himachal Pradesh.**
21. **S. Onkar Singh, age 46 years, S/o Late Shri Tarlok Singh, R/o Yol Bazaar, Kangra, Himachal Pradesh.**
22. **S.Harbhajan Singh, age 58 years, S/o Late Shri Zudev Singh, R/o Yol Bazaar, Kangra, Himachal Pradesh.**
23. **Pankaj Gupta, age 55 years, S/o Shri Jug Mohan Gupta, R/o 115, GT Road, Rail Bazar, Kanpur, U.P.**

24. Bal Krishan Gupta, age 50 years, S/o Late Shri Ram Bheja Gupta, r/o F-30, Shanti Nagar, Kanpur,U.P.

25. Ghanshyam Gupta, age 55 years, S/o Late Shri R. B. Gupta, R/o H-2/13, Krishna Puram, Kanpur U.P.

…..Petitioners

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Navyug Sethi, Advocate &
Mr. Ankesh Chandel, Advocate

Vs

1. Union of India through Secretary, Ministry of Home Affairs, 2nd Floor NDCC-II Building, Jai Singh Road, New Delhi – 110001.

2. State of Jammu & Kashmir through its Chief Secretary, Civil Secretariat, Jammu.

…..Respondents

Through: Mr. Suneel Malhotra, CGSC
Mr. Vishal Bharti, Dy. AG

Case:- OWP No. 750/2018
IA No. 1/2018

1. Deepak Chopra, aged 51 years, S/o Late Om Parkash, R/o A-299 A 2nd Floor, Block-A, Meera Bagh, Paschim Vihar, Delhi – 11087.

2. Darshan Chopra, age 60 years, S/o Late Sain Dass, R/o 43/20, Ashok Nagar (Back Side), New Delhi – 110018.

3. Sanjay Chopra, age 47 years, S/o Late Ved Parkash, R/o 43/22, Ashok Nagar, New Delhi-110018.

…..Petitioners

Through: Mr. Rajesh Kumar Basandhi, Advocate

Vs

1. Union of India, through the Home Secretary to Government of India, Ministry of Home Affairs, North Block Central Secretariat, New Delhi – 110001.

2. The State of Jammu & Kashmir, through the Commissioner/Secretary to Government of Jammu & Kashmir,

Department of Disaster Management, Relief, Rehabilitation & Reconstruction, Civil Secretariat, Jammu – 180001.

3. **The Provincial Rehabilitation Officer (PRO), Jammu, Government of Jammu & Kashmir, 505 A, Gandhi Nagar, Jammu, Jammu & Kashmir – 180004**

…..Respondents

Through: Mr. Suneel Malhotra, CGSC
Mr. Vishal Bharti, Dy. AG

Case:- CPOWP No.80/2018

1. **Balwant Singh, age 80 years, S/o Sardar Singh R/o Vijaypur, Tehsil & District Samba.**
2. **Yashpal Choudary, age 55 years, S/o Tara Chand, R/o Rangoor Camp, Tehsil & District Samba.**
3. **Nanak Chand, age 70 years, S/o Amin Chand, R/o Thalori Camp, Tehsil & District Samba.**

…..Petitioners

Through: Mr. Rupinder Singh, Advocate

Vs

1. **Mohammad Ashraf Mir, Revenue Secretary, J&K Govt.CivilSectt.J&K Govt. Jammu.**
2. **Sh. Vijay Bidhuri (IAS), Principal Secretary to Govt., Revenue Department, Civil Secretariat, Jammu.**

…..Respondents

Through: Mr. Suneel Malhotra, CGSC
Mr. Vishal Bharti, Dy. AG

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGEMENT

01. Heard learned counsel for the parties in the light of the case pleaded from both sides and presented.

02. Alike in pain and deprivation but disliked in relief and rehabilitation is the shared theme with which the writ petitioners came forward with their present respective writ petitions relating and narrating their predecessors-in-interests' lasting plight reckoning from October 1947 relayed on to the petitioners as next generation to get checked once for all the government practiced discrimination and inequality. Institution of the writ petitions is of 2017-18.

03. October 1947 had visited the then princely State of Jammu & Kashmir, whose hereditary Ruler at the relevant point of time was caught weighing its merger option as stood made to 565 princely States of India to become part of Union of India, with a genocidal invasion by and from the Pakistan State sent armed militia and army which came to be thwarted by the supreme valor and scarifies of India's armed forces but not before loot of property and deaths & displacement of more than one million native residents of western side region of the princely State of Jammu & Kashmir had taken place including loss of territory of affected region which came to be referred and is now called as Pak occupied Jammu & Kashmir (PoJK in short) which though de jure continues to be part and parcel of India but de facto yet to be regained and governed by India.

04. In this history shaping cataclysm, it is said and accepted, as an official chronicle, that some 31,619 families, escaping death siege, got uprooted and displaced from PoJK fleeing and leaving their hearth and home for the very safety of their life and limbs escaping just with wearing apparels and bare few personal belongings whatsoever gathered on the run. This event had instantaneously made the princely State of Jammu & Kashmir to accede with Union of India w.e.f 26/10/1947.

05. Of these 31,619 displaced families of PoJK, 26,319 displaced families are said to have been lodged in the civil administration set up refugee camps and other NGO set up camps in the unaffected part of the State of Jammu & Kashmir, mostly in the districts of Jammu, Kathua, Rajouri . 5300 displaced families of PoJK which were not able to find space and shelter in the overcrowded refugee camps in the State of Jammu & Kashmir were thus driven and directed to the refugee camps set up in other neighboring States i.e., Punjab, Delhi, Himachal Pradesh, Uttar Pradesh to be registered there so as to be taken care of by the respective State Governments and NGOs in the said States. As per local telling, it is believed that some 40,000 families had got displaced with some twelve lac (12) persons of PoJK becoming homeless and landless in an utter state of destitution.

06. Commonality of the causes in the writ Petitions is that while the pain and deprivation of some 5300 uprooted & displaced families of the then princely State of Jammu & Kashmir in the wake of 1947 invasion came to be assuaged in due course of time by the law of nature itself but remained unassuaged by the lawmakers and lawmen all along compounding said pain, suffering and deprivation to pass in inheritance even to next generations ultimately getting presented through the writ petitions before this court in the year 2017-2018 with an abiding trust that what article 14 of the Constitution of India holds and ensures in tryst to all citizens of India, that is Bharat, will come in reality to their assuagement in the matter of getting much delayed and deferred attention and acknowledgment of being entitled not only to get their share of relief and rehabilitation packages extended by the Govt. of India and the Govt. of State of Jammu & Kashmir from time to time but also restoration of a long deprived status of being the very much permanent subjects of the State of Jammu & Kashmir .

07. Finding that outside State of Jammu & Kashmir settled 5300 displaced families being again left out to be shareholder in a One-Time financial settlement pie of rupees two thousand (Rs.2000) crores whereby rupees five lac fifty thousand (Rs. 5.50

lac) per family was being made available to 26,319 similarly displaced families of PoJK of 1947 who had got camped and settled in the then State of Jammu & Kashmir upon becoming part of India on 26/10/1947, the petitioners have come up following one another with their respective writ petitions registering their festering anguish about the fact of discrimination and exclusion inflicted and practiced upon them in the matter of their non-rehabilitation and non-recognition of rights by the successive governments of the times of the then State of Jammu &Kashmir for reasons which were never equality driven but discrimination infested.

08. At this moment it would be very apt to observe here that if the parliamentary legislation in the form of Jammu & Kashmir Reorganization Act, 2019 would not have intervened to change the constitutional status of Jammu & Kashmir from being one of the States of Union of India to become two entities of Union Territory of Jammu & Kashmir and Union Territory of Ladakh, the adjudication of these writ petitions would have involved sifting of legal and political ingredients of the matter in examining whether the successive political entities being in government of the then State of Jammu & Kashmir could act with double standard to deal with and discriminate 1947 displaced families

of the then princely State of Jammu & Kashmir just by reference to their place of shelter camps being within the State of Jammu and Kashmir or outside it in some other neighboring States of India from whereon the displaced families had begun their new course of life as subjects of India but not to be recognized as subjects of the State of Jammu & Kashmir even upon it being one of 565 princely States becoming part of India to come under the canopy of the Constitution of India.

09. The transformation of constitutional status of the State of Jammu & Kashmir with coming into force of the Jammu & Kashmir Reorganization Act, 2019 has self-paved the way to the reliefs sought alike by the petitioners leaving this court just to guide the grant of reliefs claimed by the petitioners to be carried out by the respondent no. 1- Union of Union of India by its own constitutional commitment.

10. As before the J&K Reorganization Act, 2019, the relationship of the State of Jammu & Kashmir and the Union of India was getting governed by restricted application of the Constitution of India leaving or reserving little say with the Government of India to intermeddle, interject or injunct the decision making, be it of law or executive, of and on the part of the successive governments of the then State of Jammu &

Kashmir, so the core issue involved in all the writ petitions at the time of their respective institution was whether 1947 displaced families of the princely State of Jammu & Kashmir, who got camped and settled outside the State of Jammu & Kashmir, were entitled to be reckoned on equal parity and status with 1947 displaced families of the princely State of Jammu & Kashmir who got stationed and settled inside the State of Jammu & Kashmir.

11. The response filed in the writ petitions on behalf of the Govt. of the State of Jammu & Kashmir obviously and expectedly is in objecting tone to the claims of outside Jammu & Kashmir State settled 1947 displaced families of the princely State of Jammu & Kashmir thereby rendering the Union of India, being one of three respondents, as a mute spectator to be a passive consenter.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

12. The Govt. of the State of Jammu & Kashmir in its reply/response to the writ petitions is tight lipped as to on what basis and premise, factual and/or legal, the displaced families of PoJK 1947 non settled in the State of Jammu & Kashmir were being and are to be differently treated and discriminated as compared to the displaced families of PoJK 1947 got camped and settled in the State of Jammu & Kashmir. There was never an option prescribed to the displaced families of PoJK of 1947 that

whosoever will not get camped and settled in the State of Jammu and Kashmir is going to lose its nativity of the State of Jammu & Kashmir.

13. Now, after the Jammu & Kashmir Reorganization Act, 2019, the Govt. of India, through its Ministry of Home Affairs, has come to revise its response in the case from being a passive voice to become an active voice by registering its willingness todo the course correction in all respects and aspects beginning with in extending the one time settlement benefit of equal extent and amount in favor of 5300 displaced families PoJK, 1947 being represented by the petitioners as being successors-in -interest/ legal heirs as otherwise made available to 23,319 displaced families PoJK, 1947 who had stayed and settled in the erstwhile State of Jammu & Kashmir.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH सत्यमेव जयते

14. This revised stand on the part of the Govt. of India after the State of Jammu & Kashmir losing its special 370 status and becoming a Union Territory of Jammu & Kashmir is meaning to undo the historical injustice to the displaced families of PoJK 1947 non settled in the State of Jammu & Kashmir and that relieves this court also from the labor of entering adjudication of the matter in the writ petitions.

15. Nevertheless, for the sake of an honorable closure of the writ petitions, the matter deservingly calls for a survey and study of facts and circumstances in the back drop of which the Govt. of India is now obliged to do for the grieving subjects of India who are tagged as displaced persons of PoJK 1947 but non-residents of the erstwhile State of Jammu & Kashmir.

16. Before the petitioners finally came across to have cause of action for filing of the present writ petitions to give vent to their long pending grievances, the petitioners had found the displaced families of PoJK 1947 settled outside the erstwhile State of Jammu & Kashmir repeatedly ousted from care and consideration at every given occasion whenever the governments of the time in charge of the political affairs and administration of the State of Jammu & Kashmir had conceived and carried out any legal exercise and/or doled out any relief/rehabilitation package, with or without financial assistance of the Govt. of India, in favor of and with respect to the displaced families of PoJK of 1947 who were residing in the State of Jammu & Kashmir.

17. The mindset to exclude the known 5300 displaced families of PoJK 1947 not settled in the State of Jammu & Kashmir from getting any legal status and recognition viz a viz the State of Jammu & Kashmir got exhibited with legislation of the

Jammu & Kashmir Displaced Persons (Permanent Settlement) Act, 1971 in which in the definition of " Displaced Person" a displaced person of PoJK of 1947 who came to get camped and remained residentially settled outside State of Jammu & Kashmir stood excluded from being a displaced person under the ambit of the said Act and thus not entitled to benefits of the Jammu & Kashmir Displaced Persons (Permanent Settlement) Act, 1971. Section 2 (a) of the Jammu & Kashmir Displaced Persons (Permanent Settlement) Act, 1971 reads as under:

> "**Displaced person means any person who is permanent resident of the State and who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or fear of such disturbances in any area of the State occupied by Pakistan has, after the first day of March, 1947, left or has been displaced from, his place of residence in such area and who has been subsequently residing outside such area in the State sand also includes the successors-in-interest of any such person;"**

Literally read it is very obvious that a displaced person of PoJK of 1947 who upon displacement came to be camped and reside outside the State of Jammu & Kashmir was not to be recognized as displaced person for claiming the benefits of the

Act. Just by text orientation of one definition in the said Act, 5300 displaced families of PoJK 1947 came to be disqualified legally from having any say and status in the State of Jammu & Kashmir notwithstanding their displacement from the princely State of Jammu & Kashmir.

18. Later on, when the Govt. of India through its Ministry of Home Affairs, Rehabilitation Division vide an Order No. 332/97/Settlement dated 09.08.2000 had put a rehabilitation package at the disposal of the Govt. of the day in the State of Jammu & Kashmir for displaced persons of PoJK 1947 involving financial assistance of Rs. 25,000/- per family for the land deficiency attending allotment of land in their favor, the displaced families of PoJK 1947 which were settled out of State of Jammu & Kashmir were not meant to be the beneficiaries.

19. In the year 2007, the Govt. of State of Jammu and Kashmir constituted a Wadhwa Committee to look into the demands and problems of displaced persons of PoJK 1947, 1965 & 1971 who were located in the State of Jammu & Kashmir thus hinting out clearly that displaced families of PoJK 1947 camped and residing outside the State of Jammu & Kashmir were alien to the political government of the State of Jammu & Kashmir.

20. The Govt. of India, again acting through the Ministry of Home Affairs, FFR Division, vide Order No. 31/6/2002-Settlement dated 24.12.2008 had sanctioned Rs. 40 crores to the Govt. of State of Jammu & Kashmir for ex-gratia/cash compensation with respect to land deficiency of displaced families of PoJK who were residing in the State of Jammu & Kashmir to the exclusion of the ones residing out of State of Jammu & Kashmir.

21. At the end of the Govt. of Jammu & Kashmir vide Govt. Order No. Rev/Rehab/132 of 2009 dated 19.10.2009 financial assistance had come to be enhanced to Rs. 30,000/- per kanal deficiency with maximum admissible to Rs. 1,50,000/-. In this also, the displaced persons of PoJK 1947 residing outside the State of Jammu & Kashmir were not to be beneficiaries.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

22. In September, 2015, a department related Parliamentary Standing Committee of Home Affairs in its 183rd report had come forward with recommendations of sufficient financial assistance to displaced persons for sustenance till finalization till one-time settlement, cash compensation of Rs. 20 lacs by the Central Govt. and cash compensation in lieu of land deficiency for displaced persons of 1965 & 1971 on the analogy of 1947 displaced persons was mooted.

23. Taking a clue from the said 183rd report of Parliamentary Standing Committee of Home Affairs, the Govt. of State of Jammu & Kashmir vide its letter No. Rev/Rehab/08/2011 dated 20.10.2014 had mooted a proposal to the Govt. of India for Rs. 25 lacs per displaced family a one-time settlement assistanceto 36,384 displaced families of 1947, 1965 & 1971 involving financial requirement and input of Rs. 9096 crores. In this proposal, 5,300/- displaced families of PoJK of 1947 who were residing outside State of Jammu & Kashmir were kept out from being the beneficiaries.

24. It is at this moment that from the Govt. of India's end a D. O. letter No. 31/1/2011-R&SO Part II dated 07.11.2014 came to be addressed to the then Govt. of State of Jammu & Kashmir seeking clarifications whether displaced families of PoJK 1947 settled outside State of Jammu & Kashmir were included in the rehabilitation package as submitted vide letter No. Rev/Rehab/08/2011 dated 20.11.2014 by the Govt. of State of Jammu & Kashmir and also to cite thereby the details of those displaced families of PoJK 1947settled outside State of Jammu & Kashmir.

25. It seems that to this D.O. letter of the Govt. of India seeking clarification, the Govt. of State of Jammu & Kashmir

labored no effort and interest to respond thereby registering its disinclination in the legal care of displaced families of PoJK 1947 settled outside State of Jammu & Kashmir. From the end of the Govt., of India, the aforementioned D.O. letter was followed with reminder letter No. 31/1/2011-R&SO Part II dated 21.11.2014 only to receive stoic silence response from the Govt. of the State of Jammu & Kashmir's end.

26. It was on 07.11.2015 that the Hon'ble Prime Minister of India came to announce a State of Jammu & Kashmir specific Development Package of 2015. One of the components of the said Package of 2015 was "**Rehabilitation Package of One-Time Settlement of 36,384 of PoJK and Chhamb Displaced Persons**" and for this package financial assistance from the Govt. of India's end was of Rs. 2000 crores.

27. Seeing this package coming in favour of the State of Jammu & Kashmir, the Chief Secretary, Govt. of Jammu & Kashmir vide its letter No. R&R/Rehab/CSC/19/2015 dated 22.12.2015 came to take up the matter for facilitating the release of the sanctioned financial assistance of Rs. 2000 crores. This seeking was followed by a letter No.R&R/Rehab/CSC/19/2015 dated 14.06.2016 from the end of the Chief Secretary of the Govt. of State of Jammu & Kashmir bearing a proposal to the Ministry

of Home Affairs, Govt. of India for soliciting the release of package of an amount of Rs. 2000 crores for 36,384 displaced families which comprised of 26319 displaced families of PoJK 1947 settled inside State of Jammu & Kashmir and 10,065 displaced families of Chhamb of 1965 & 1971 war. Thus, displaced families of PoJK 1947 settled outside State of Jammu & Kashmir numbering 5300 stood excluded from being recipients/shareholders in the said relief & rehabilitation package as the Govt. of the State of Jammu & Kashmir did not register even its remote interest in reckoning the displaced families of PoJK 1947 settled outside State of Jammu & Kashmir to be a part and parcel of the Subjects of the State of Jammu & Kashmir.

28. Vide communication No. 31/01/2011-R&SO dated 22.12.2016, the Ministry of Home Affairs, FFR Division came to convey to the Chief Secretary of the Govt. of Jammu & Kashmir accord of approval to the proposal of Jammu & Kashmir Govt. with respect to Prime Minister's Package of Rs. 2000 crores for displaced families of PoJK 1947, displaced families of Chhamb of 1965 & 1971.

29. This Court has reasons and basis to make a safe inference that the then Govt. of State of Jammu & Kashmir in its clarification kept the displaced persons of PoJK settled outside

the State of Jammu & Kashmir out of purview of relief and rehabilitation package in exploit of it being its domain of decision making admitting of no dictation from the Govt. of India leaving no other option with the Govt. of India but to provide the relief and rehabilitation package as solicited by the Govt. of Jammu & Kashmir. In fact, at the relevant point of time given the constitutional relationship of the then Govt. of State of Jammu & Kashmir under the Constitution of India, it was not available for the Govt. of India to dictate to the then Govt. of State of Jammu & Kashmir about the modalities of relief and rehabilitation exercise intended at the end of the then Govt. of State of Jammu & Kashmir for displaced families of PoJK settled in the State of Jammu & Kashmir by whose reference relief &rehabilitation package was being solicited and thus the Govt. of India came to announce the Prime Minister's Development Package for J&K– 2015 which included the rehabilitation package for displaced families of PoJK 1947 as it is submitted by the Govt. of State of Jammu & Kashmir.

30. The composition and application of this Rs. 2000 crores package was meant to be for disbursement of Rs 5.50 lacs per family as one-time financial assistance to each and every displaced family involving total 36,384 displaced families in which

the share contributed by the Govt. of India was of Rs.5,49,692/- and by the State Govt. of Jammu & Kashmir to be Rs. 308/-.

31. The adverse mindset of the State Govt. of the State of Jammu & Kashmir in not extending the courtesy of acknowledgment of the entitlement of the 5300 displaced families of PoJK 1947 non settled in the State of Jammu & Kashmir is reflected from the fact that in the financial composition of the rehabilitation package the Govt. of the State of Jammu & Kashmir was to contribute miniscule share of Rs. 308 as against major burden being shared by the Govt. of India in the form of Rs. 5,49,692/- but the Govt. of State of Jammu & Kashmir did not deem a displaced family of PoJK 1947 non settled in the State of Jammu & Kashmir worth support of Rs. 308 from its coffers.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

32. Upon being assured of availability of the said financial package of Rs.2000 crores for the purpose of disbursement from the Govt. of India's end, the Govt. of State of Jammu & Kashmir acted fast to encash the package and for that a meeting at the end of the Financial Commissioner, Relief & Rehabilitation/Principal Secretary to the Chief Minister of the State of Jammu & Kashmir with respect to the implementation of the Prime Minister's Development Package-2015 had taken place on 28.12.2016, as a result whereof the Divisional Commissioner,

Jammu came forward with an advertisement in terms of advertisement No. DIP/J-9659 dated 18.02.2017 in a local newspaper of Jammu on 18.02.2017 thereby inviting displaced persons to apply for one-time settlement benefit subject to the fulfillment of the eligibility conditions as stipulated therein.

33. This public advertisement came to be followed by Govt. Order No. 22-JK(DMRRR) of 2017 dated 27.03.2017 whereby the Govt. of Jammu & Kashmir notified the rehabilitation scheme. It is at this moment that the petitioners found a cause of action worth appropriate leading them to the institution of the present writ petitions reckoning illegal and discriminatory their exclusion to be the beneficiaries of the said one-time financial assistance being served by the Govt. of Jammu & Kashmir in favor of displaced families of PoJK 1947 and also of Chhamb of the year 1965 & 1971.

34. The eligibility for seeking the benefit of said Rs.5,50,000/- as one-time settlement amount was very loudly mentioned that the claimant/head of the displaced person family or his/her successor or heir shall be residing within the State and that meant the exclusion of the entire flock of 5300 displaced families of PoJK 1947 settled outside the State of Jammu & Kashmir meaning a clear message that the then Govt. of State of

Jammu & Kashmir was conscious of the fact of presence of 5300 displaced families of PoJk non settled in the State of Jammu & Kashmir but designedly intended the exclusion of all such displaced families of PoJK 1947 non settled in the State of Jammu & Kashmir from becoming beneficiary for the reasons which find no basis, legal or factual, on the record of the present cases.

35. This intent and motive on the part of the Govt. of State of Jammu & Kashmir to signal to 5300 displaced families of PoJK 1947 non settled in the State of Jammu & Kashmir not to entertain any fond hope and impression of stake holder in the relief and rehabilitation package of Rs. 2000 crores is exposed from the manner in which the very eligibility requirements came to be tailored and advertised a bare reading of which would leave a displaced family of PoJK 1947 non settled in the State of Jammu & Kashmir disillusioned from very reading of the advertisement. The said terms and conditions are reproduced hereunder:-

Procedure prescribed for implementation of the Scheme

Application forms (Attached as Schedule-II) along with requisite documents shall be submitted by the applicant in the office of respective Designated Authority. After proper scrutiny and verification of each claim, the Designated Authority shall submit the claims for endorsement of the Divisional Commissioner

(Jammu) who shall forward the claims to the Financial Commissioner (Rev) J&K. Thereafter, the FCR shall forward the same to the State Relief & Rehabilitation Department for further submission of the same to the Ministry of Home Affairs, Government of India for Direct Transfer of the relief assistance to the beneficiaries to their 16 Digit Account Number. The NIC shall develop software for implementation of the scheme. The Ex-Gratia Relief under this scheme shall be disbursed to the beneficiaries by adopting Direct Benefit Transfer (DBT) e-payment through Public Financial Management System-PFMS (formerly Central Plan Scheme Monitoring System-CPSMS) being run by office of the Controller General of Accounts, Ministry of Finance, Government of India in partnership with National Informatic Centre, New Delhi which has already been used in the state for transfer of Prime Minister's National Relief Fund (PMNRF) as compensation to disaster sufferers (beneficiaries) of September, 2014 floods through a Central Agency viz.NDMA. The details of the procedure to be adopted are attached as schedule III.

List of documents to be submitted along with application form in the office of the Designated Authority.

I. DP of Pakistan occupied Jammu & Kashmir 1947 shall submit copies of following documents along with the application forms in the office of PRO Jammu: -

i) Form A duly certified by PRO Jammu/Deputy PRO Jammu.

ii) Form D duly certified by PRO Jammu/Deputy PRO Jammu.

iii) Ration card (camp) duly certified by PRO Jammu/Deputy PRO Jammu.

iv) Loan ledger duly certified by PRO Jammu/Deputy PRO Jammu.

v) Nominal roll (Registration no.) duly certified by PRO Jammu/Deputy PRO Jammu.

vi) Order of allotment of Plot/quarter duly certified by PRO Jammu/Deputy PRO Jammu.

vii) Order of allotment of land (by Joint Rehabilitation Board of 1954 Copy of Joint Rehabilitation Board of 1951 duly certified by PRO Jammu/Deputy PRO Jammu.

viii) Electoral Roll of period – prior to 1965/1971 duly certified by attested by Election Naib Tehsildar concerned.

ix) Permanent Resident Certificate (PRC) duly attested by a Gazetted Office.

x) Bank Account document bearing 16 digits Account No. along with name and address of the Bank Branch duly self attested.

xi) Aadhaar Card duly self attested.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

36. The very fact that holding of permanent resident certificate was prescribed for an applicant to apply for seeking due assistance of Rs. 5.50 lac per displaced family meant that non permanent resident of State of Jammu & Kashmir even if he or she was legal heir of the displaced person of PoJK of 1947 settled outside of the State of Jammu & Kashmir was not to step forward to even get an application form lest that of submitting it for the benefit earning.

37. This Court can read and reckon that there was/is no legal basis but a political motive in keeping the displaced families of PoJK 1947 non settled in the State of Jammu & Kashmir to remain out of purview of the benefits of the relief &rehabilitation package. This Court would restrict and reserve its observations to this extent to let itself suggest the underlying operating motive on the part of the then Govt. of the State of Jammu & Kashmir in choosing to act with the step-motherly mindset against the displaced families of PoJK 1947 settled outside the State of Jammu & Kashmir in the rest of the Country, leaving the Govt. of India no other option but to come forward with the relief &rehabilitation package as schemed and solicited by the Govt. of the State of Jammu & Kashmir but the concern of the Govt. of India to the entitlement of 5300 displaced families of PoJK of 1947 settled outside State of Jammu & Kashmir remained lurking in the attention and concern of the Govt. of India for becoming beneficiary in the rehabilitation package which is exhibited from the following communication of the Govt. of India:-

"No.16018/07/2018-KV
Ministry of Home Affairs
Department of Jammu and Kashmir Affairs
(K-V Desk)
****

#206, 2nd Floor, North Block, New Delhi
4thOctober, 2018

To

The Chief Secretary
Government of Jammu & Kashmir

Civil Secretariat
Srinagar.

Sub:-Clarification regarding extending one time financial assistance to 5300 left out families of PoJK DPs of 1947, initially registered outside the State.

Respected Sir,

I am directed to refer to your D.O. letter No. R&R/Rehab/CSC/19/15-I dated 30.09.2018, where in you have recommended for extending of one time financial assistance to the 5300 left out families of PoJK DPs of 1947 initially registered outside the State of J&K, on the basis that these families are presently residing in J&K.

In this regard, I am to invite your attention to the letter dated 14-3-2016 of GoJK, where in, it was mentioned that these 5300 families have left J&K in 1947 to different parts of the country. But the letter has not mentioned their present place of residing at Jammu & Kashmir. Accordingly, as per the recommendation of the GoJK, the cabinet approval was taken for the 36,814 DP families of PoJK (1947) settled in J&K.

However, the said D.O. letter has categorically mentioned that these 5300 families who have left J&K in 1947, are presently residing in J&K. In this regard, I am directed to seek clarifications on the following issues in order to enable us to proceed further in this regards:

a) Total Number of PoJK DPs of 1947.

b) The number of DP families who have opted to settle in J&K out of the point (a) above.

c) The number of DP families who have opted to settle outside J&K out of the point(a) above.

d) The Number of DP families who have returned back to J&K after initially leaving J&K to settle outside J&K, out of the point (c) above with details of Date of return and place of present settlement.

e) The Number of DP families who have not been extended any kind of assistance out of the point (d) above.

f) The Reasons/Justification for not including the DP families as mentioned at point (d) above in the earlier proposal of One time Financial Assistance to DP families of PoJK(1947).

g) Further, the basis for arriving at the conclusion that only 26000 DP families are presently residing as against 36,384 DP families of 1947 who have been extended the Financial assistance.

h) The Current Status of the remaining 10,384 DPs out of 36,384 may also be informed.

Kindly arrange to send the above information/clarifications at the earliest for further processing the issue as mentioned in your D.O. Letter dated 30.9.2018.

Your's Faithfully,

sd/-
(T. Sreekanth)
Director (J&K-LM)"

38. The petitioners in their writ petitions reckoned that inclusion of displaced persons of Chhamb of 1965 & 1971 which counted up to 3500 displaced families of 1965 and 6565 displaced families of 1971, totaling 10,065 at the cost of 5300 displaced families of PoJK 1947 settled outside State of Jammu & Kashmir and this is the reason that in all the writ petitions the petitioners have sought exclusion of 10, 065 displaced families of Chhamb of 1965 & 1971 and instead seeking inclusion of the displaced families of PoJK 1947 settled outside State of Jammu & Kashmir.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

39. It is at this moment that the first writ petition came to be filed which is OWP No. 901/2017 filed on 07.06.2017 by the two petitioners, both of whom being real brothers, one born in 1947 in Muzaffarabad being part of Princely State of Jammu & Kashmir later becoming PoJK and the petitioner No.2 being born in Himachal Pradesh where the parental displaced family had come to be lodged upon their displacement from PoJK.

40. This writ petition came to be followed by the institution of writ petition OWP No. 1026/2017 on 03.07.2017 bringing eight (8) petitioners together to register their individual grievances bearing same text and context as set up in the writ petition OWP No. 901/2017.

41. Writ petition OWP No. 1215/2017 filed on 31.07.2017 involving twenty one (21) petitioners bearing the same telling of agony and anguish representing the displaced families of PoJK 1947 settled outside State of Jammu & Kashmir. Writ petition OWP No. 1615/2017 filed on 07.10.2017 is by 7 petitioners. Writ petition OWP No. 1822/2017 filed on 08.11.2017 is by a registered society known as Mirpur Balidan Bhawan Samity joined by twenty four (24) individual petitioners posing a serious challenge to the very exclusion of displaced person of PoJK 1947 non settled in the State of Jammu & Kashmir from being recognized as permanent resident of the State of Jammu & Kashmir envisaged under the J&K Grant of Permanent Resident Certificate (Procedure) Rules, 1968.

42. Writ petition OWP No. 1561/2017 filed on 10.09.2017 is by five(5) petitioners to be next joined by the writ petition OWP No. 750/2018 filed on 23.04.2018 by three(3) petitioners as being

the last writ petition in the community of the aforesaid writ petitions.

43. Thus, the institution of the aforesaid writ petitions came to be triggered by the sole fact that in the name of the Prime Minister's Development Package-2015, the Govt. of State of Jammu & Kashmir had kept 5,300 displaced families of PoJK 1947 out of its purview being not considered deserving to be granted Rs.5,50,000/- per displaced family, much less other legal benefits and status.

44. Step-motherly oriented mindset of the Govt. of the State of Jammu & Kashmir in treating 5,300 displaced families of PoJK 1947 settled outside State of Jammu & Kashmir became evident when the Chief Secretary of the Govt. of Jammu & Kashmir vide D.O. letter No. R&R/Rehab/CSC/19 dated 30.09.2018 addressed to the Ministry of Home Affairs, Govt. of India sought modification of the scheme to include left out displaced families of PoJK 1947, which though were registered outside State of Jammu & Kashmir but later on came to reside in the State of Jammu & Kashmir as their inclusion was meant to bear no additional financial burden and thus required the concurrence of the Govt. of India. In this D.O. letter, the Chief Secretary of the Govt. of Jammu & Kashmir did not disclose as to how many displaced families registered

outside State of Jammu & Kashmir were intended to be benefited. In this regard, the Govt. of India through Ministry of Home Affairs, Department of J&K Affairs vide letter No. 16016/07/2018-K-V dated 04.10.2018 came to seek requisite clarifications from the Govt. of Jammu & Kashmir.

45. It is from this moment onwards that the Govt. of India came to revisit its stand and policy with respect to displaced families of PoJK 1947 settled outside State of Jammu & Kashmir in the matter of becoming beneficiary for one-time settlement package, which is rendered evident from the course of events in the form of Administrative Council Decision No. 192/19/2019 dated 30.07.2019, the Govt's approval dated 09.10.2019 for inclusion of left out displaced families of PoJK 1947 settled outside State of Jammu & Kashmir but later coming to the State of Jammu & Kashmir for resident purposes, Govt. Order No. **07-**JK/DMRRR of 2019 dated 11.12.2019 which being the first Govt. order coming after enforcement of the Jammu & Kashmir Reorganization Act, 2019.

46. The Administrative Council Decision No. 26/4/2020 dated 05.02.2020 resulted in issuance of Govt. Order No. 20-JK(DMRRR) dated 10.02.2020 by the Union Territory of Jammu & Kashmir whereby one-time settlement benefit stood declared

available to displaced families of PoJK 1947 settled out but later coming back to the State of Jammu & Kashmir. This declaration impliedly acknowledges the fact that inherent status of the displaced person/family of PoJK of 1947 non settled in the State of Jammu & Kashmir was and is that of being the very much part and parcel of the Jammu & Kashmir State Subjects as otherwise by mere fact of a displaced person/family of PoJK 1947 living all along outside the State of Jammu & Kashmir but choosing to come back should not have earned him/it an entitlement to the rehabilitation package given the unabated approach of the governments of the times in the State of Jammu & Kashmir in not extending any legal recognition to the displaced person/family of PoJK of 1947 settled outside State of Jammu & Kashmir and thereby keeping them ousted from getting any relief and status in the State of Jammu & Kashmir.

47. By acting in recognition of the fact that the displaced families of PoJK 1947 settled outside State of Jammu & Kashmir had not lost their status as the residents of State of Jammu & Kashmir, the Govt. Order No. 52-JK(DMRRR) dated 16.05.2020 has come to be issued thereby inviting registration of displaced persons for the purpose of issuance of domicile certificates who were left out from registration because of being outside the State

of Jammu & Kashmir. It is thus a legal measure which is a case of better late than never.

48. This Govt. Order literally acknowledges and admits 5300 displaced families PoJK 1947 settled outside State of Jammu & Kashmir equally and fully entitled to be registered as the Domiciles of the Union Territory of Jammu & Kashmir. Condition No.vi to Clause 3(II) only requires proof of registration with any competent authority or governments of other States or UTs of any displaced family of PoJK 1947 for seeking issuance of domicile certificate in relation to the Union Territory of Jammu & Kashmir.

49. In furtherance of the policy of abandonment pursued all along by the Govt. of the State of Jammu & Kashmir as mentioned above and on account of above referred legal impediments, more than 5300 families were left out with respect to the benefit of relief merely on account of difference in location regarding their respective lodgment and settlement upon their dislocation in October 1947 from the princely State of Jammu & Kashmir.

50. Now, in the light of what has been stated above, the Government of India and the Govt. of the Union Territory of Jammu & Kashmir are on same page intending to extend the benefit even to those 5300 displaced families of PoJK of 1947 and

their successors who have been left out and settled elsewhere in other parts of the country but became victims of onslaught in October, 1947.

51. It is equally pertinent to mention that out of rupees 2000 crores, an amount of rupees 1457.00 crores has been spent leaving an unutilized amount within the prescribed cap of which amount, the other displaced families of PoJK of 1947can be duly taken care of. Even otherwise even if it requires an additional input of financial package for accommodating 5300 displaced families the Govt. of India would be well advised to bear the additional financial burden to ensure that no displaced family out of pool of 5300 displaced families of PoJK of 1947 is left out from soothing of their pain and suffering.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

52. It is equally worthwhile to mention that the scheme under reference has now been extended to 31 March, 2022 but in view of the uphill task of rehabilitation of relief and other benefits to the displaced families, a proposal have been mooted before the competent authority to take up matter with the Government of India for further extension of the scheme.

53. This court holds and declares that 5300 displaced families of PoJK of 1947 settled outside the State of Jammu & Kashmir at all relevant point of time from October 1947 till

present moment suffered no loss of their State Subject status notwithstanding no formal holding of permanent resident certificate by displaced person/s of such family/ies of PoJK of 1947 and same shall remain so with respect to their successor generation/s. By this status, each and every displaced family of PoJK of 1947 non settled in the State of Jammu & Kashmir is rendered entitled to share and stake holder in the relief and rehabilitation package and all other principal and ancillary benefits and status as vested in the displaced family of PoJK of 1947 which remained settled in the State of Jammu & Kashmir.

54. Before coming to serve an epilogue to this judgment, this court needs to borrow a supporting reference and reliance from a judgment of the Hon'ble Supreme Court of India in the context of article 14 of the Constitution of India in the matter of valid and invalid discrimination and differentiation in law of the persons being governed by and under the Constitution of India and constitutional principles solemnized under the Constitution of India.

55. In the case of Association of Old Settlers of Sikkim &Ors Vs Union of India & Anr., 2023 (V) SCC 717, the issue deliberated is with respect to the definition of "Sikkimese" in section 10(26AAA) of the Income Tax Act to the extent it excluded the

Indians, who had settled in Sikkim prior to the merger of Sikkim with India on 26/04/1975 and also status of a Sikkimese Woman who married a non-Sikkimese after 01/04/2008.

56. By doing survey of its pronouncements obtaining on article 14 of the Constitution of India , the Hon'ble Supreme Court of India came to hold the exclusion of old Indian Settlers who had settled in Sikkim prior to the merger of Sikkim with India on 26/04/1975 from the definition of "Sikkimese" in section 10(26AAA) as arbitrary, discriminatory and violative of article 14 of the Constitution of India. The Hon'ble Supreme Court of India examined the case to hold that the exclusion has no nexus with the object and purpose of enacting section 10(26AAA) of the income Tax Act to be achieved. The differentia was found to be without any reasonable intelligible differentia. Similarly in the case of a Sikkimese woman marrying a non-Sikkimese being read as ousted from the definition of "Sikkimese" was held to be violative of article 14 of the Constitution of India.

57. In the present case, the discrimination and exclusion of displaced families of PoJK of 1947 settled outside State of Jammu 7 Kashmir as compared to the replica displaced families of PoJK of 1947 which remained settled in the State of Jammu & Kashmir is more acute and artificial having no sense and substances

whatsoever. In the present case the discrimination has not been law driven but discretion engineered on the part of the successive governments of the State of Jammu & Kashmir. At no point of time it was declared or could be declared by any government of the day in the governance of the State of Jammu & Kashmir, be it in elected or non-elected status, that 5300 displaced families of PoJK of 1947 which got settled outside the State of Jammu & Kashmir were not the natives and bonafide & hereditary subjects of the princely State of Jammu & Kashmir so as not to be entitled to become subjects of the political State of Jammu & Kashmir.

58. In comparison to the case (supra) dealt by the Hon'ble Supreme Court of India where Indians settled long back in Sikkim were held entitled to be reckoned as Sikkimese, in the present case the 5300 displaced families of PoJK of 1947 settled outside State of Jammu & Kashmir are reclaiming and reinforcing their vested status of being the subjects of the State of Jammu & Kashmir as were and are the 26,319 displaced families of PoJK of 1947 who remained settled in the State of Jammu & Kashmir. Dislocation from princely State of Jammu & Kashmir in October 1947 was not self-invited or self-opted by 31,619 displaced families of affected part of the princely State of Jammu & Kashmir and similarly lodgment of the displaced families in the refugee

camps in and outside the State of Jammu & Kashmir was not a matter of refugee camp shopping by and for the destitute and displaced families of PoJK. At no point of time, the government of any given time in the State of Jammu & Kashmir had come forward with a legislation or an executive law, meant as a call for the 5300 displaced families of PoJK of 1947 settled outside the State of Jammu & Kashmir to exercise their respective options of retaining their status as subject of the State of Jammu and Kashmir or to relinquish it. Thus, what actually came to be practiced by the government of the State of Jammu & Kashmir from time to time against 5300 displaced families of PoJK of 1947 settled outside the State of Jammu & Kashmir was a discrimination and exclusion, all along, with out any legitimacy and legality.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

59. As the Govt. of India has now volunteered to revisit and reorient the entire position with respect to 5300 displaced families of PoJK of 1947 through their successors/heirs settled outside the erstwhile State of Jammu & Kashmir and that includes consideration of their respective entitlement to get and be paid the one time settlement amount as afforded to the 26,319 displaced families of PoJK of 1947 settled in the erstwhile State of Jammu & Kashmir, so this court disposes of all the writ petitions

with a direction to the Govt. of India to treat the 5300 displaced families of PoJK of 1947 through their successors/heirs settled outside the erstwhile State of Jammu & Kashmir alike and equally with the 26,319 displaced families of PoJK of 1947 settled in the erstwhile State of Jammu & Kashmir and consequently work out one time settlement rehabilitation package as made admissible to 26,319 displaced families of PoJK of 1947 settled in the erstwhile State of Jammu & Kashmir and further to accord same status and entitlements in their respective favour as held and enjoyed by the 26,319 displaced families of PoJK of 1947 settled in the erstwhile State of Jammu & Kashmir. Needful to be done at the earliest and preferable within six months next.

Disposed of.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
सत्यमेव जयते

(RAHUL BHARTI)
JUDGE

JAMMU
20.12.2023
Muneesh

Whether the order is speaking : **Yes**

Whether the order is reportable : **Yes**