



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

Reserved On: 24th of September, 2025

Pronounced On: 6th of October, 2025

LPA No. 204/2024; CM No. 4793/2024:

1. Marlene Jhan

Aged about 65 years

W/O Late Mohammad Aslam Phalgaroo

2. Tabrez Ashley Jhan

Aged about 34 years

S/O Late Mohammad Aslam Phalgaroo

3. Azher Aslam

Aged about 40 years

S/O Late Mohammad Aslam Phalgaroo

All Residents of Hassanabad Road, Rainawari, Srinagar
[Presently residing at Flat No. 5,
Royal Link Apartment, Coxtown, BBMP,
Bengaluru, Karnataka]

4. Mohammad Syed Phalgaroo

Aged about 58 years

S/O Ali Mohammad Phalgaroo

R/O Hassanabad Road, Rainawari, Srinagar.

... Appellant(s)

Through: -

Mr Salih Pirzada, Advocate with

Ms Sharaf Wani, Advocate.

V/s

1. Union Territory of Jammu & Kashmir,

Through Commissioner/ Secretary to Government,
Revenue Department, J&K, Civil Secretariat,
Jammu/ Srinagar.

2. Divisional Commissioner,

Kashmir, Srinagar.

3. Deputy Commissioner/ District Magistrate,

Srinagar.



4. Additional Deputy Commissioner, Srinagar.
5. Commissioner, Srinagar Municipal Corporation, Srinagar.

... Respondent(s)

Through: -

Mr Bikramdeep Singh, Dy. AG with
Ms Nowbahar Khan, Assisting Counsel.

Clubbed With:

LPA No. 223/2024; CM No. 5266/2024:

**Mohammad Aslam Phalgaroo
(Deceased)**

S/O Ali Mohammad Phalgaroo
R/O Hassanabad Road, Rainawari, Srinagar
Through Legal Representatives:

1. Marlene Jhan
Aged about 65 years
W/O Late Mohammad Aslam Phalgaroo
2. Tabrez Ashley Jhan
Aged about 34 years
S/O Late Mohammad Aslam Phalgaroo
3. Azher Aslam
Aged about 40 years
S/O Late Mohammad Aslam Phalgaroo

All Residents of Hassanabad Road, Rainawari, Srinagar
[Presently residing at Flat No. 5,
Royal Link Apartment, Coxtown, BBMP,
Bengaluru, Karnataka].

... Appellant(s)

Through: -

Mr Salih Pirzada, Advocate with
Ms Sharaf Wani, Advocate.

V/s

1. **State of Jammu & Kashmir,**
Through Commissioner/ Secretary to Government,
Housing & Urban Department, J&K, Civil Secretariat,
Jammu/ Srinagar.



2. Srinagar Municipal Corporation
Through Commissioner, Srinagar Municipal Corporation,
Srinagar.
3. Sr. Superintendent of Police,
Srinagar.
4. Bashir Ahmad Bhat
S/O Mohammad Sultan Bhat
R/O Bangi Kocha, Aqilmir Khanyar, Srinagar.
5. Abdul Rashid Haroon
S/O Mohammad Sultan Haroon
R/O Andhrooni Kathidarwaza, Srinagar
6. Commissioner/ Secretary to the Government, Revenue Department.

... Respondent(s)

Through: -

Mr Bikramdeep Singh, Dy. AG with
Ms Nowbahar Khan, Assisting Counsel for R-1 to 3 & 6;
Mr A. Hanan, Advocate for R-4 & 5.

CORAM:

Hon'ble Ms Justice Sindhu Sharma, Judge
Hon'ble Mr Justice Shahzad Azeem, Judge

(JUDGMENT)

Shahzad Azeem-J:

01. The Appellants have challenged the Judgment dated April 03, 2024 passed by the learned Single Judge [“the Writ Court”] in OWP No. 1159/2018 titled ‘**Mohammad Aslam Phalgaroo v. State of J&K and Ors.**’ and WP (C) No. 1275/2021 titled ‘**Marlene Jhan & Ors. v. Union Territory of J&K and Ors.**’, whereby and whereunder the Writ Court has dismissed the Writ Petitions by a common Judgment.

FACTS:

02. The facts, in brief, may be noticed hereunder:



03. Both the appeals arise from a common Judgment, therefore, for the sake of brevity and convenience, we propose to dispose of the same by a common Judgment.

04. In order to understand the controversy in its right perspective, it is relevant to note that the Petitioner-Mohammad Aslam Phalgaroo had filed first Writ Petition OWP No. 1159/2018, however, he died during the pendency of the proceedings, therefore, the second Writ Petition WP (C) No. 1275/2021 and instant Letters Patent Appeals (LPAs) came to be filed by the successors-in-interest of the deceased estate holder, Mohammad Aslam Phalgaroo.

05. The Petitioner-Mohammad Aslam Phalgaroo [the predecessor-in-interest of the Appellants] is said to have purchased a piece of land measuring 7735 sq. fts situated at Khayam Road, Nowpora, Srinagar by virtue of a registered sale deed, executed on June 22, 1999 from the primary owner thereof, namely, Ghulam Mohammad Khatayee.

06. The Petitioner claimed that he continuously remained in possession of the land since its purchase, until the Respondents have started the construction of a huge commercial complex over the land by committing trespass, while taking advantage of his absence. However, on getting information of the said construction by the Respondents over the piece of land, the Petitioner is said to have represented on the basis of spot position and title deed, but no action was taken to stop the unauthorized construction.

07. Accordingly, in order to enforce his right to enjoy the property, the Petitioner-Mohammad Aslam Phalgaroo had filed Writ Petition OWP No. 1159/2018, to which the Respondents filed Objections, wherein, according to the Appellants, for the first time, it came to fore that the land in question had been handed over to the Srinagar Municipal Corporation for construction of a shopping complex and, in this regard, NOC came to be



issued by the Additional Deputy Commissioner, Srinagar vide communication dated February 24, 2014, therefore, through the medium of WP (C) No. 1275/2021, the Appellants have challenged the NOC dated February, 24, 2014.

PROCEEDINGS BEFORE THE WRIT COURT:

08. The case set up before the Writ Court was that the land in question was duly bounded on all sides, as delineated in the site plan and the owner(s) continuously enjoyed and remained in possession of the land in pursuance of a duly executed sale deed, however, the Respondents, without following due process of law, trespassed into the proprietary land and thereby unauthorizedly and illegally raised the construction on spot, therefore, prayed for restoration of possession and quashment of NOC granted in favour of the Srinagar Municipal Corporation, and also to grant compensation and damages, respectively.

09. The Writ Court, in a common Judgment dated April 03, 2024, adjudicated both Writ Petitions and reached to a conclusion that there are serious disputed questions of fact involved, therefore, the Writ Petition under Article 226 of the Constitution of India is not maintainable.

10. To keep the record straight, it would be in the fitness of things if paragraph Nos. 22 and 23 of the impugned Judgment are taken note of and same read as under:

“22. The bedrock of the said two writ petitions is the sale deed dated 22.06.1999 made by Ghulam Mohammad Khatyee in favour of Mohammad Syed Phalgaroo. Said sale deed is a registered sale deed but in terms of its recital and the supporting documents it does not identify in which khasra number/ ward number the subject matter land of the sale deed is situated and how the title of Ghulam Mohammad Khatyee, the purported vendor, was traceable and relatable to the said land forming subject matter of the sale deed. As against this, the case of the respondents is very clear that they are dealing and doing with their own land against which the sale deed in reference being cited and exploited by the



petitioners cannot be allowed to have any over-bearing effect.

23. What is the exact location of the land forming subject of the sale deed and how it is in conflict with the land of the respondents is a pure disputed question of fact which this Court in a writ petition is not competent to deal with in any manner whatsoever. It is not for this Court to improve the sale deed description of the subject matter land or for that matter to supply the proper description in terms of its khasra/ward number etc. Surely, the sale deed is not supported by any revenue extract for this Court to bind the authors of the said revenue extract to locate the land forming subject matter of the revenue extract on the basis of which the execution and registration of the sale deed came to take place. Therefore, it was farfetched on the part of the Mohammad Aslam Phalgaroo as well as on the part of the petitioners to come in the writ petitions under Article 226 of the Constitution of India for the purpose of retrieving the purported lost possession of the land forming subject matter of the sale deed bearing no proper delineation and description in particular in terms of its location in khasra number/ward number and also the title history of Ghulam Mohammad Khatyee, the purported vendor figuring in the sale deed.”

11. From the perusal of the above extracted paragraphs of the impugned Judgment, it is conspicuous that the Writ Court, while passing the impugned Judgment, had come to the conclusion that the sale deed, in pursuance of which the vendee-Mohammad Aslam Phalgaroo had staked the claim over the land in question, does not contain the survey number/ward number and, therefore, it has become difficult to reach a definite conclusion that as to whether the land in question is the same land which was purchased by the predecessor-in-interest of the Appellants from the vendor, namely, Ghulam Mohammad Khatayee. The Writ Court, in categoric terms, observed that it is not for the Court to improve the sale deed description of the subject matter land or, for that matter, to supply the proper description in terms of its khasra number/ward number, etc., as the sale deed is not supported by any revenue extract, so as to locate the land



forming the subject matter of revenue extract, on the basis of which the execution and registration of the sale deed came to take place.

CHALLENGE:

12. The bone of contention of the Appellants is that the findings of the Writ Court have virtually invalidated the registered sale deed executed by their predecessor-in-interest by holding that the location of the land in question is a disputed question of fact. The registered sale deed confers marketable title over the property in their favour, who are none other than the successors-in-interest of the vendee.

13. It is also agitated that the title over the property can only be transferred by virtue of a registered instrument and the mutation in the revenue records would not confer any right or title to any person. The sale deed executed on June 22, 1999 has conferred right of ownership and possession in favour of the predecessor-in-interest of the Appellants, which has attained finality, since no challenge was thrown by the Respondents to the validity of the said sale deed.

14. According to the Appellants, once there is a duly registered sale deed, in pursuance of which right of ownership was conferred upon the predecessor-in-interest of the Appellants, there was no occasion to declare the said land as the State land. The action of the Additional Deputy Commissioner, Srinagar, cancelling the revenue entries of the land in question, at their back, is without any backing of law.

15. In order to buttress his argument that the entries in the revenue record carry a presumption and, until and unless any such entry or order is declared void by a competent forum, it is not permissible to ignore the same, merely on the basis of an opinion that the said order is void, the learned Counsel for the Appellants placed reliance on the following Judgments:



- i. **Krishnadevi Malchand Kamathia & Ors. v. Bombay Environmental Action Group & Ors., AIR 2011 SC 1140;**
- ii. **Pratap Singh (Dead) through LRs & Ors. v. Shiv Ram (Dead) through LRs, AIR 2020 SC 1382; and**
- iii. **The State of Punjab & Ors. v. Bhagwatpal Singh through LRs, 2024 INSC 518.**

16. On the other hand, the consistent stand of the Respondents is that the land measuring 09 Kanals and 13 Marlas falling in Survey Nos. 1512 and 1513 situate at Khanyar, Nowpora is recorded as “*Sarkar*” in the ownership column of *Jamabandi* and “*Mehfooz Kahcharie*”, while as, the Habib and others are recorded as illegal occupants in the tenancy column of *Jamabandi*. It is also contention of the Respondents that all the illegal entries found to have been made in the tenancy column under these Survey Numbers have been set aside by virtue of Mutation No. 1866 (*Sehat Indiraj*).

17. According to the Respondents, the land measuring 01 Kanal, 08 Marlas, 197 sqfts and 90 inches under Survey Nos. 1512 Min and 1513 Min (*Musha*) is under the possession of the Srinagar Municipal Corporation and the Corporation is constructing a commercial building over the said land in pursuance of NOC issued by the Revenue Department vide communication dated February, 24, 2014.

18. It is important to note that the Srinagar Municipal Corporation has also filed Objections before the Writ Court on March 14, 2019, wherein the Corporation has taken the same stand that the land in question has been handed over to it for construction of a shopping complex and, in this regard, NOC has been issued in its favour, wherein the land in question is described as “*Mehfooz Kahcharie*”. It is also submitted by the Corporation that it has already constructed a three storeyed commercial building over the land.



ANALYSIS:

19. From the entire gamut of the controversy, it appears that the land measuring 7735 sqfts located at Khayam Road, Nowpora, Srinagar came to be purchased by the predecessor-in-interest of the Appellants, namely, Mohammad Aslam Phalgaroo, from the vendor-Ghulam Mohammad Khatayee, in pursuance of sale deed dated June 22, 1999. Copy of the sale deed depicts the names of the vendor and the vendee, respectively, with description of the property as, **“land measuring 7735 sqfts situate at Khayam Road, Nowpora, Srinagar within municipal limits of Srinagar City, more particularly shown and delineated in the site plan annexed with the sale deed for sale consideration of Rs. 5.00 lacs.”**

20. If one were to find out, as per the recital of the said sale deed, the description of the land in question, it redirects to a site plan and the referred site plan appears to have been prepared on the oral instructions of the Plaintiff, in a Suit for permanent injunction titled **‘Mohammad Aslam Phalgaroo v. BOCA & Ors.’**, signed by Draftsman, Amini, Adalat, Sadder Court dated June 29, 2009 and one more document in Urdu is annexed, which is, *ex-facie*, vague and lacking in material particulars to identify the land, as same lends no help to dig out its peripheral surroundings, nor it contains any survey number where the parcel of land is situate, so that same can be identified.

21. In any case, in our considered opinion, the scope of judicial review is very limited and it is not for the Writ Court to enter into the territory which needs adjudication of facts by leading evidence.

22. Admittedly, as on date, the Srinagar Municipal Corporation has raised the construction of a multi-storeyed commercial complex over the land, on which the Appellants have been staking their claim in the



capacity of being owners in possession on the strength of a duly registered sale deed.

23. To the contrary, the claim of the Respondents is that the land in question is a State land and the revenue entries, whatever wrongly made, came to be set right.

24. From the above noticed facts, one thing is obvious that regarding the nature of the land that as to whether same is State land or proprietary land, there is dispute between the parties, besides, the sale deed, on which much reliance is being placed by the Appellants, is lacking in the material particulars, so as to find the location of the land, as the sale deed is totally silent in this regard and, on examination of the entire available record, we also concur with the observations of the Writ Court.

25. Under these circumstances, to say that the findings of the Writ Court have the necessary effect of invalidating the sale deed is not tenable, as the Writ Court did not enter into that arena, but, on noticing serious disputed questions of fact, declined to exercise the extraordinary Writ jurisdiction to address the merits of the case.

26. On a glance, the NOC dated February 24, 2014 issued by the office of Deputy Commissioner, Srinagar, it becomes conspicuous that the piece of land measuring 01 Kanal, 08 Marlas, 197 sqfts and 09 inches is located at Khanyar, Nowpora near Khyber Hospital, situate in estate Brarinambal is recorded as "*Sarkar*", however, later on, the said piece of land has been shown as "*Mehfooz Kahcharie*", with illegal possession of the locals and the entries have already been set aside and the encroachment has been removed. This recital shows that there is a dispute regarding the very nature of the land in question. According to the Respondents, it is a State land, whereas, to the contrary, the assertion of the Appellants is that the land in question is duly purchased in pursuance of a registered sale deed, but, said sale deed is silent about its location and survey number.



Therefore, whatever the revenue entries came to be maintained on the basis of the said sale deed will always be questionable and can only be decided in appropriate proceedings before the Civil Court.

27. In a case which travelled upto the Hon'ble Supreme Court, where a plot of land came to be duly purchased in execution of a sale deed, but, later on, a dispute regarding the said piece of land had arisen, the Hon'ble Supreme Court, in unequivocal terms, held that where the title of the Writ Petitioner is in dispute, it cannot be gone into or adjudicated in a Writ Petition and further held that the question will have to be agitated in appropriate forum.

28. In this regard, what has been held by the Hon'ble Supreme Court in '**State of Rajasthan v. Bhawani Singh & Ors., AIR 1992 Supreme Court 1018**', is worth noticing, thus:

"7. Having heard the counsel for the parties, we are of the opinion that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition."

29. In the case on hand, one of the prayers of the Appellants before the Writ Court was with regard to the restoration of the possession of the land over which the construction has been raised by the Respondents, however, although, there is nothing to show that it is the same land which was purchased by the predecessor-in-interest of the Appellants, but, assuming so for the sake of arguments, still, indisputably, as of now, over the said land, a multi-storeyed structure constructed by the Srinagar Municipal Corporation is hovering, therefore, if the plea of the Appellants is accepted, same would amount to recovery of the possession, thus, the necessary corollary of such an action would amount to passing a decree in favour of the Appellants and same is neither conceivable nor permissible under law.



30. In this regard, a reference can be made to the observations made by the Hon'ble Supreme Court in '**Shri Sohan Lal v. Union of India & Ors., AIR 1957 Supreme Court 529**', which are reproduced hereinbelow, *verbatim*:

"5. We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. These are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Art. 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.

.....

8. In our opinion, the High Court erred in allowing the application of Jagan Nath filed under Art. 226 of the Constitution and making the order it did. The appeal is accordingly allowed and the order of the High Court is set aside. In, the circumstance of the present case, however, we are of the opinion that each party should bear his own costs in this Court and in the High Court."

31. It is settled proposition of law that where a serious dispute on questions of fact between the parties persists and a particular question arose as to whether one of the parties has acquired any title to the property in dispute, the proceedings by way of Writ under Article 226 of the Constitution of India is not the appropriate remedy in a case where the decision of the Court would amount to a decree declaring a party's title and ordering restoration of possession.

32. Thus, in the facts and circumstances, the proper remedy in such a case is by way of a title suit in a Civil Court and the alternative remedy of obtaining relief by a '*Writ of Mandamus*', or, an order in the nature of *mandamus* would only be had if the facts were not in dispute and the title of the property in dispute was clear. The Appellants did not



substantiate the assertion of having ownership right over the land in question as well as their possession, in that, as per the Respondents, the land over which the Appellants are claiming their stake is State land and whatever wrong revenue entries were existing, same were removed. Under these circumstances, there has been nothing to come to a definite conclusion regarding the title of the Appellants over the parcel of land, as the purported sale deed is *sans* survey number and identifiable location, which is the source of alleged right of ownership and resultant possession.

33. Learned Counsel for the Appellants also placed much reliance on the sale deed, in pursuance of which the predecessor-in-interest of the Appellants had acquired the status of owner in possession of the land in question, however, the contention of the Appellants, in this regard, that the Writ Court nullified the sale deed is also misconstrued, inasmuch as self-defeating, because nowhere the Writ Court questioned the execution of the document, but, on *prima facie* examination, the Writ Court found that same is lacking in disclosing the description of the land in question, so as to identify its exact location.

34. Here, we are confronted with a situation, where if the plea of the Appellants is accepted, same would trigger an unfair advantage to the Appellants over the Respondents, because the sale deed, on which the Appellants are relying, is of such a nature that same can be seamlessly integrated into any space or location, as per their playful desires, therefore, such an intricate question of fact can only be decided in appropriate civil proceedings.

35. Learned Counsel for the Appellants has relied on the Judgments, as referred hereinbefore, but same do not lend any support in the facts and circumstances of the case, because, at no point of time, any order or entry purportedly existing in favour of the Appellants is ever declared void by the Writ Court. To the contrary, the Writ Court only held



that since there are disputed questions of fact, therefore, abstained from exercising jurisdiction under Article 226 of the Constitution of India, as such, the Judgments relied upon by the Appellants are not applicable.

36. Besides the above made observations, it is also worth noticing that the Appellants have also prayed for grant of compensation and damages, however, assuming if they are found entitled to the said relief, same can only be quantified by leading evidence in appropriate proceedings, which cannot be assessed in a Petition under Article 226 of the Constitution of India.

RESULT:

37. In the above backdrop, we are of the considered opinion that the impugned Judgment does not suffer from any error of law or fact as would warrant interference. Accordingly, both the appeals being devoid of merit are **dismissed**. Interim direction(s), if any subsisting as on date, shall stand vacated.

38. Registry to place a copy of this Judgment on each file.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

SRINAGAR
October 6th, 2025
"TAHIR"

- i. Whether the Judgment is approved for reporting? **YES.**