

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 724/2007

Date of pronouncement: 21.08.2026

Date of uploading: 21.08.2026

Vishal Singh age 29 years
S/O Late Sh. Ravi Singh
R/O Old Satwari Jammu Cantt.,
Tehsil and District Jammu

.....Petitioner

Through: Mr. R.S. Thakur, Sr. Advocate with
Mr. Varsharan Thakur, Advocate

vs

1. The State of J&K, through:
 - a) Chief Secretary, Government of Jammu and Kashmir, Jammu.
 - b) The Commissioner/Secretary, Home Department, Government of Jammu and Kashmir Jammu.
2. Jammu Municipal Corporation, Jammu, through its Joint Commissioner.
3. Divisional Commissioner, Jammu Division, Jammu.
4. Deputy Commissioner, Jammu.
5. Senior Superintendent of Police, Jammu.
6. Sh. Raju Choudhary S/o Sh. Sudershan Kumar R/o H. No. 56-A/D, Gandhi Nagar, Jammu.
7. Sh. Sanjay Mahajan S/o Sh. Ravinder Kumar R/o H. No. 78-B/D, Gandhi Nagar, Jammu.
8. Joint Commissioner, Jammu Municipal Corporation, Jammu.
9. Sh. Vinod Sharma, Joint Commissioner, Jammu Municipal Corporation, Jammu.

10. Sh. Anil Goswami, IAS, Principal
Secretary to the Chief Minister, Jammu
and Kashmir, Jammu.

..... Respondents

Through: Ms. Nazia Fazal, Assisting counsel to
Mrs. Monika Kohli, Sr. AAG for R-1,3,4 & 5
Ms. Mehar Bali, Assisting counsel to
Mr. Ravinder Gupta, AAG for R-2,8 & 9
Mr. K.S. Johal, Sr. Advocate with
Mr. Supreet Singh Johal, Advocate for R-6 & 7.
Mr. Altaf Hussain, Sr. Advocate (Th. VC) with
Mr. Anuj Dewan Raina, Advocate for R-10

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE
JUDGMENT

1. Heard the counsel for the parties besides examined in detail the record of proceedings.

2. The petitioner, invoking the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution, seeks issuance of a writ of *certiorari* and other appropriate directions, inter alia, commanding the respondent–Jammu Municipal Corporation not to accord sanction for raising any residential/commercial structure over land measuring 3 Kanals and 16 Marlas, comprising Khasra No. 192 Min, Khewat No. 1, Khata No. 1, situated at Channi Rama, Tehsil and District Jammu. A further direction is sought for restraining the private respondents from carrying on construction over the said land and for initiation of criminal proceedings against them on the allegations levelled in the writ petition.

3. The controversy between the petitioner and respondent Nos. 6 and 7 pertains to land measuring 3 Kanals and 16 Marlas, stated to form part of a larger parcel measuring 7 Kanals under Khasra No. 192 Min. The petitioner asserts ownership and possession over the land in question and alleges that the private

respondents, in connivance with the official respondents and with the assistance of respondent Nos. 9 and 10, succeeded in obtaining building permission and thereafter attempted to raise a commercial complex thereon. It is not in dispute that civil proceedings concerning the land are pending *inter se* the parties. The building permission granted in favour of respondent Nos. 6 and 7 has also been questioned by the petitioner before the J&K Special Tribunal.

4. The undisputed factual background of the case is that respondents Nos. 6 and 7 initially instituted a civil suit before the Court of 3rd Additional Munsiff, 1st Class, Jammu, against Pradeep Kumar Jain and Rinki Jain in respect of land measuring 3 kanals and 16 marlas, comprising Khasra No. 192 min, Khewat No. 01 and Khata No. 01 min, situated at Channi Rama, Tehsil and District Jammu. In the said suit, the learned Munsiff, vide order dated 04.03.2005, directed the parties to maintain *status quo* with respect to the land in dispute till the next date of hearing. The petitioner, in the meantime, instituted a suit on 19.05.2005 before the Court of learned 1st Civil Subordinate Judge, Jammu, seeking a decree of permanent prohibitory injunction against respondents Nos. 6 and 7 and one Bhushan Mahajan, restraining them from interfering with the petitioner's peaceful possession over land measuring 7 kanals falling under Khasra No. 192, Khewat No. 1 and Khata No. 01 min, besides land measuring 3 kanals and 16 marlas falling under Khasra No. 192 min. In the said proceedings also, the parties were directed to maintain *status quo*.

5. In connection with the order of *status quo* passed by the learned 3rd Additional Munsiff, Jammu, the Court directed the SDPO East, Jammu, to ensure its implementation. In his report dated 02.08.2007, the SDPO stated that upon visiting the spot, a JCB and a truck were found engaged in excavation of soil from

the left front portion of the plot and dumping the same towards its left rear side. The plot was stated to comprise approximately 20 kanals and to be facing the roadside. The SDPO further reported that the dispute appeared to be of a serious nature and was likely to result in breach of peace. It was also reported that the party claiming possession maintained that the order of *status quo* had been obtained at its instance and related only to possession over land measuring 3 kanals and 16 marlas falling under Khasra No. 192 min, situated at Channi Rama. The SDPO, accordingly, sought clarification from the Court as to whether the party claiming possession could proceed with construction and thereby alter the nature of the land and, further, as to the precise portion of the larger tract to which the order of *status quo* applied.

6. During the pendency of the aforesaid suit, Pradeep Kumar Jain and Rinki Jain are stated to have entered into a compromise with respondents Nos. 6 and 7. It is, however, admitted that the petitioners had also moved an application in the said suit seeking their impleadment as party-defendants. The said suit continues to remain pending. The suit instituted by the petitioners on 19.05.2005 was subsequently given up. Thereafter, on 12.07.2007, the petitioners instituted another suit, impleading the Jammu Municipal Corporation, respondents Nos. 6 and 7 and one Bhushan Mahajan as defendants. In the said suit, besides seeking restraint against interference with the land claimed by them, the petitioners also sought an injunction restraining the Municipal Corporation from granting building permission in favour of respondents Nos. 6 and 7.

7. The aforesaid suit was also withdrawn by the petitioners on 25.07.2007, allegedly upon their coming to know that building permission had already been granted in favour of respondents Nos. 6 and 7. Thereafter, the

petitioners instituted yet another suit on 07.09.2007 before the Court of City Judge, Jammu, substantially seeking the same reliefs as had been claimed in the earlier proceedings. The City Judge, however, vide order dated 07.09.2007, stayed the proceedings under **Section 10 of the Code of Civil Procedure**, upon noticing that an earlier suit concerning land measuring 3 kanals and 16 marlas falling under Khasra No. 192 min was already pending before the Court of learned 3rd Additional Munsiff, Jammu, wherein an order of *status quo* had been passed. Consequently, the suit instituted before the City Judge, Jammu, on 07.09.2007 remains stayed in terms of Section 10 CPC, whereas the suit instituted by respondents Nos. 6 and 7 in respect of land measuring 3 kanals and 16 marlas continues to remain pending before the competent Civil Court.

8. It is also relevant to notice that 3rd Additional Munsiff, Jammu, vide order dated 27.08.2007, declined to issue directions to the police agency for demarcation of the land with the assistance of the revenue authorities. The Id. Court observed that the parties were contesting their respective claims on the basis of pleadings, revenue record, documents and other material placed before it. Since the parties were disputing each other's possession and had already been directed to maintain *status quo*, the prayer seeking appointment of a commission/demarcation in exercise of powers under Order XXXIX Rule 7 CPC was declined.

9. Learned counsel for the petitioner, when confronted with the availability of an alternative remedy against the order dated 27.08.2007 passed by the 3rd Additional Munsiff, Jammu, submitted that the writ jurisdiction of this Court had been invoked as the said order was not appealable. A similar submission was advanced with respect to the order dated 07.09.2007 passed by

the City Judge, Jammu, and it was contended that the petitioner had been rendered remediless.

10. The principal limb of the petitioner's argument is that respondent No. 10 was a senior bureaucrat serving in the then Government of Jammu and Kashmir and, being a close relative of respondents Nos. 6 and 7, was in a position to wield influence and manage the proceedings in their favour. The allegation has been strongly controverted by the counsel appearing for respondent No. 10, who submits that respondent No. 10 had already left Jammu and Kashmir in the year 2010. Be that as it may, the mere circumstance that respondent No. 10 happened to be a close relative of respondents Nos. 6 and 7 cannot, *ipso facto*, give rise to a presumption that he exercised influence over the judicial or administrative process. An allegation of such nature must necessarily be supported by specific and material particulars demonstrating the manner in which such influence was exercised. No such specific instance or material has been brought to the notice of the Court. The contention, therefore, cannot be accepted merely on the basis of relationship between respondent No. 10 and respondents Nos. 6 and 7.

11. This Court has further been informed that after building permission was granted in favour of respondents Nos. 6 and 7, the petitioners assailed the said permission before the competent Tribunal. The proceedings before the Tribunal were, however, subsequently given up by the petitioners. Senior Counsel appearing for the petitioner submits that the remedy before the Tribunal was not an appropriate remedy and that the building permission ought to have been assailed before this Court. The submission may require consideration in the context of the statutory framework then governing the grant of building permission. However, without entering into the question as to whether the

building permission granted in favour of respondents Nos. 6 and 7 was appealable or revisable under the applicable municipal laws, the material fact remains that building permission had, in fact, been granted and that the suit instituted by the petitioners against the Municipal Corporation was withdrawn after they acquired knowledge of such permission.

12. Ld. counsel for the petitioner has nevertheless urged that the building permission was granted despite the fact that the Naib Tehsildar had earlier declined to attest mutation in favour of the concerned persons owing to the pendency of the civil dispute. The said contention has been controverted on behalf of the respondents. It is submitted that although the Naib Tehsildar, vide order dated 11.05.2005, had declined to attest mutation in respect of the land in question in favour of Sanjay Mahajan and Raju Chowdhary, the Jammu Municipal Corporation has categorically stated in its reply that Building Permission No. 299/BP/07 dated 25.07.2007 was granted only after due verification. It is further not in dispute that the sanctioned building plan was challenged by the petitioners before the Tribunal by way of statutory proceedings seeking its setting aside, but the petitioners subsequently chose not to pursue the said remedy.

13. Ld. Counsel for the Municipal Corporation, relying upon the judgment reported as **AIR 1964 SC 1419**, has contended that where a statute provides an aggrieved person with an efficacious remedy before another forum or tribunal, the High Court would ordinarily decline to exercise its extraordinary jurisdiction under Article 226 of the Constitution so as to permit the statutory mechanism to be bypassed. The principle relied upon assumes significance in the facts of the present case. The extraordinary jurisdiction under Article 226 is discretionary in nature and is not intended to substitute the ordinary remedies

available to a litigant under the governing statutory framework. Where an efficacious remedy is available and the controversy essentially involves adjudication of disputed questions of civil rights, title or possession, the parties would ordinarily be required to pursue the remedies provided by law.

14. In the case at hand, the controversy essentially pertains to land measuring 3 kanals and 16 marlas, with the contesting parties asserting rival claims of possession. Respondents Nos. 6 and 7, *prima facie*, claim possession over the said land on the strength of a registered sale deed, consequential mutation and the building permission granted by the competent authority. The grant of building permission is also stated to have followed verification by the concerned authorities. The dispute, in its substance, is thus predominantly civil in character, involving competing claims concerning possession and rights over immovable property. The competent Civil Court is already seized of the matter and is empowered to adjudicate the respective rights and claims of the parties on the basis of pleadings, documentary evidence, revenue record and such other evidence as may be produced before it. In these circumstances, the extraordinary writ jurisdiction cannot ordinarily be invoked as a substitute for the remedies available before the Civil Court or other competent statutory authorities.

15. In a case titled “*Roshina T. Vs. Abdul Azeez K.T. & Ors*” 2019 (2) SCC 329, Hon’ble Supreme Court has held as under: -

“10. It is not in dispute that the reliefs for which the writ petition was filed by the respondent No. 1 herein against the appellant pertained to possession of the flat. It is also not in dispute that one Civil Suit No. 807 of 2014 between the appellant and respondent No. 1 in relation to the flat in question for grant of injunction was pending in the Court of

Munsiff at Kozhikode. It is also not in dispute that the appellant and respondent are private individuals and both are claiming their rights of ownership and possession over the flat in question on various factual grounds.

12. *The question as to who is the owner of the flat in question, whether respondent No. 1 was/is in possession of the flat and, if so, from which date, how and in what circumstances, he claimed to be in its possession, whether his possession could be regarded as legal or not qua its real owner, etc. were some of the material questions which arose for consideration in the writ petition.*

13. *These questions, in our view, were pure questions of fact and could be answered one way or the other only by the civil court in a properly constituted civil suit and on the basis of the evidence adduced by the parties but not in a writ petition filed under Article 226 of the Constitution by the High Court.*

16. *We cannot, therefore, concur with the reasoning and the conclusion arrived at by the High Court when it unnecessarily went into all the questions of fact arising in the case on the basis of factual pleadings in detail (43 pages) and recorded a factual finding that it was respondent No. 1 (writ petitioner) who was in possession of the flat, and, therefore, he be restored with his possession of the flat by the appellant.*

17. *In our opinion, the High Court, therefore, while so directing exceeded its extraordinary jurisdiction conferred under Article 226 of the Constitution. Indeed, the High Court in granting such relief, had virtually converted the writ petition into a civil suit and itself to a civil court. In our view, it was not permissible.”*

16. All factual assertions made in the writ petition have been specifically disputed and controverted by the respondents. During the course of hearing, learned counsel for the respondents submitted that the allegation of the

petitioners that the respondents, in collusion with Pardeep Kumar Jain, had encroached upon the petitioners' land on the strength of a sale deed executed by one of the co-owners is wholly without legal basis. The attention of this Court was also drawn to the demarcation reports prepared from time to time, as well as the relevant revenue record. A perusal thereof reveals that Beas Singh, one of the co-sharers of the petitioners, acting through his constituted attorney, Bhushan Mahajan, had sold land measuring 3 kanals and 16 marlas, comprising Khasra No. 192 min, situated at Channi Rama, Tehsil and District Jammu, in favour of respondent Nos. 6 and 7.

17. At the time of execution of the sale deed, Beas Singh was stated to be in possession of the land in question and had alienated the same to the extent of his share. Significantly, the petitioners have not challenged the said sale deed till date. On the contrary, they have been contesting the civil suit instituted by respondent Nos. 6 and 7 before the Court of the learned 3rd Additional Munsiff, Jammu, wherein the petitioners have also been impleaded/substituted as parties. In such circumstances, recourse to the extraordinary writ jurisdiction of this Court, particularly for assailing the judicial orders dated 27.08.2008, passed by the learned 3rd Additional Munsiff, Jammu, and 07.09.2007, passed by the learned City Judge, Jammu, was wholly misconceived and unwarranted.

18. It is well settled that disputed questions relating to title and possession, which necessarily require adjudication on the basis of evidence, cannot ordinarily be determined in exercise of writ jurisdiction. The Hon'ble Supreme Court, in *State of Rajasthan v. Bhawani Singh, 1993 Supp (1) SCC 306*, reiterated that disputed questions of title cannot satisfactorily be gone into or adjudicated upon in writ proceedings. In the present case, there is, in substance,

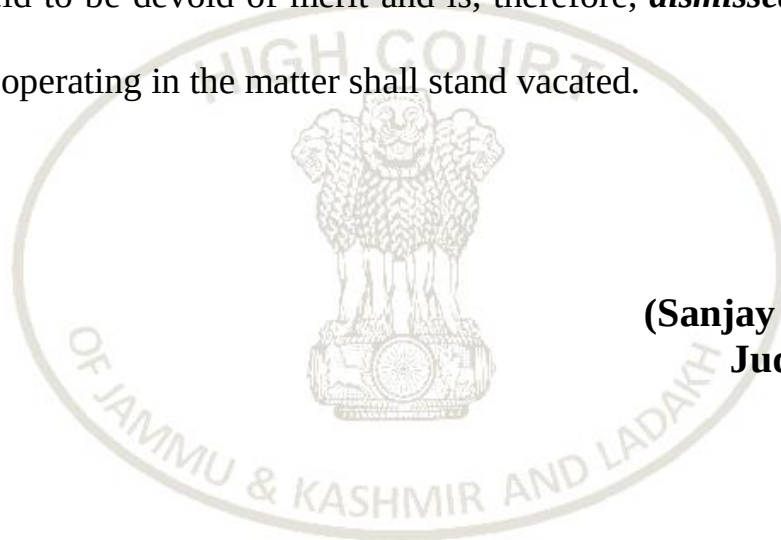
no dispute between the petitioners and the official respondents requiring interference in writ jurisdiction. The controversy essentially pertains to the *inter se* rights of the petitioners and respondent Nos. 6 and 7 in respect of the land in question, and the competent Civil Court is already seized of the matter.

19. Likewise, in ***D.L.F. Housing and Construction Pvt. Ltd. v. Delhi Municipal Corporation, AIR 1976 SC 386***, the Hon'ble Supreme Court held that where the basic facts are disputed and complicated questions of fact and law, requiring determination on the basis of evidence, arise for consideration, a writ petition is not the appropriate remedy. In such circumstances, the proper course is to decline interference in writ jurisdiction, leaving the parties to pursue their remedies before the competent Civil Court.

20. The record further indicates that the petitioners had instituted successive civil proceedings and thereafter abandoned the same. Having done so, they cannot be permitted to invoke the extraordinary writ jurisdiction of this Court for securing substantially the same relief which they could not obtain, or chose not to pursue, before the competent Civil Court. The petitioners have also alleged collusion between the official respondents and the private respondents, primarily on the premise that one of the private respondents occupies an influential position and is, therefore, capable of prevailing upon the authorities to the prejudice of the petitioners. Such allegations, however, cannot be accepted merely on the basis of apprehension, conjecture or surmise. Allegations of collusion and mala fides must be supported by specific and cogent material. The petitioners cannot, in the absence of such material, make sweeping allegations against the revenue authorities, police authorities and the administration as a whole and contend that

all such authorities have acted in concert to dispossess or otherwise prejudice them.

21. Nothing on record substantiates or even reasonably supports such allegations. The controversy raised in the present petition essentially involves disputed questions concerning title and possession, which cannot appropriately be adjudicated in exercise of extraordinary writ jurisdiction. Moreover, the competent Civil Court is already seized of the dispute between the parties. In view of the aforesaid circumstances, this Court finds no ground to exercise its extraordinary writ jurisdiction in favour of the petitioners. The writ petition is, accordingly, held to be devoid of merit and is, therefore, **dismissed**. Any interim direction/order operating in the matter shall stand vacated.



(Sanjay Parihar)
Judge

Jammu
21.08.2026
Rahul Sharma

Whether the judgment is speaking: Yes
Whether the judgment is reportable: Yes