

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

WP(C) No. 1104/2020

1. **Santokh Singh,**
age 62 years
S/o S. Mayia Singh,
R/o W.No. 11, Kathua
A/p H.No. 43,
Lane No. 27,
Greater Kailash, Jammu
 2. **S. Mohinder Singh,**
Age 58 years
S/o S. Mayia Singh,
R/o W.No. 11, Kathua
 3. **Baldev Singh,**
age 55 years
S/o S. Mayia Singh,
R/o W.No. 11, Kathua
 4. **Bachan Kour,**
age 63 years
D/o S. Mayia Singh,
Wd/o Surinder Singh
R/o W.No. 10 Kathua
- Appellant(s)/Petitioner(s)

Through: Mr. Vishal Mahajan, Advocate

Vs

1. **Union Territory of J&K,**
Th. Commissioner/Secy.
Revenue Department,
Civil Secretariat, Jammu
2. **Deputy Commissioner (Collector),**
Kathua
3. **Assistant Commissioner, (Revenue),**
Kathua
4. **Tehsildar, Nagri, Parole, District Kathua**
5. **Sham Singh, S/o Gian Chand,**
R/o Village Mirpur Ram,

Tehsil Nagri, District Kathua

6. **Lal Singh, S/o Gian Chand,
R/o Village Mirpur Ram,
Tehsil Nagri, District Kathua**
7. **Suram Singh, S/o Hazoor Singh,
R/o Village Mirpur Ram,
Tehsil Nagri, District Kathua**
8. **Kuldeep Singh,
S/o Hazoor Singh
R/o Village Mirpur Ram,
Tehsil Nagri, District Kathua**
9. **Rakesh Singh, S/o Subash Singh,
R/o Village Mirpur Ram,
Tehsil Nagri, District Kathua**
10. **Parveen Singh, S/o Subash Singh
R/o Village Mirpur Ram,
Tehsil Nagri, District Kathua**
11. **Raghubir Singh, S/o Ram Singh,
R/o Village Mirpur Ram,
Tehsil Nagri, District Kathua**
12. **Dalbir Singh, S/o Rachpal Singh,
R/o Village Mirpur Ram,
Tehsil Nagri, District Kathua**
13. **Mst. Sandhya Devi, Wd/o Rachpal Singh
R/o Village Mirpur Ram,
Tehsil Nagri, District Kathua**

..... Respondent(s)

Through: Ms. Mrinal, Advocate vice
Mrs. Monika Kohli, Sr. AAG for official
respondents
Mr. V.R. Wazir, Sr. Advocate with
Mr. Abhishek Wazir, Advocate for
R-5 to 13

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE
ORDER
(07.05.2025)

- 01.** Heard.
- 02.** This writ petition should not detain this Court any further in terms of its adjudication and disposal as the writ petition can be disposed of without causing prejudice to both sides in terms of their respective claims qua the property forming the subject matter of the litigation.
- 03.** The petitioners are brothers and sister being 'successors-in-interest' of Sardar Mayia Singh, who had come forward with present writ petition being aggrieved of an order dated 19.06.2020 in file no. NP/08/2020-21/30-37 passed by the Tehsildar with powers of Executive Magistrate 1st Class, Nagri Parole, in terms whereof purported proceedings under section 145 of the Code of Criminal Procedure, 1973 came to be set into effect at the self discretion of the Tehsildar, (Executive Magistrate 1st Class), Nagri Parole, who perceived apprehension of breach of peace of law and order problem taking place with respect to cultivation of land measuring 31 kanals 15 marlas comprising khasra No. 296, 298 and 299 situated in village Mirpur Ram, tehsil Nagri Parole, district Kathua.
- 04.** This apprehension of the Tehsildar, (Executive Magistrate 1st Class), Nagri Parole, came to be drawn from a report self submitted by him to the Assistant Commissioner Revenue, Kathua, who in turn directed the Tehsildar, (Executive Magistrate 1st Class), Nagri Parole, to act and proceed in

the light of section 145 of the Code of Criminal Procedure, 1973 and furnish an action report to Assistant Commissioner Revenue, Kathua.

- 05.** Thus, it is on the direction of Assistant Commissioner Revenue, Kathua, that Tehsildar, (Executive Magistrate 1st Class), Nagri Parole, came to draw impugned order dated 19.06.2020 in terms whereof the Tehsildar, (Executive Magistrate 1st Class), Nagri Parole, came to order placing of land measuring 31 kanals 15 marlas comprising khasra No. 296, 298 and 299 situated at village Mirpur Ram, tehsil Nagri Parole, district Kathua, at the Superdari of Sh. Bodh Raj S/o Krishan Singh R/o Lakhnote Lumberdar (Taraf Bala), till the High Court to give some decision in a case being sub-judiced before the High Court.
- 06.** The impugned order does not and cannot stand the test of being in consonance with the requirement of section 145(1) of the Code of Criminal Procedure, 1973, which envisages drawing of a preliminary order by an Executive Magistrate stating therein with respect to his satisfaction that there is a state of dispute amongst the parties concerned with respect to land or water and actual possession thereof.
- 07.** An order of attachment is a consequence of preliminary order which is to be drawn under section 145(1) of the Code of Criminal Procedure, 1973.

08. In the present case, the impugned order is as if attachment of property is the primary part of jurisdiction of section 145 of the Code of Criminal Procedure, 1973 and this is where Tehsildar, (Executive Magistrate 1st Class), Nagri Parole, went seriously wrong in true understanding, application and invocation of section 145 of the Code of Criminal Procedure, 1973, rendering the impugned order bad in the eyes of law and warranting its setting aside, which is accordingly, set-aside without prejudice to the rights of the parties *qua* the property in reference, to be settled in terms of an dispute, be it pending or to be filed in a competent court of law, on the civil side of the jurisdiction.
09. Nothing observed herein shall be taken to be an observation on merits with respect to the respective claims of the parties to the property in reference.
10. The petition is accordingly, ***disposed of***.
11. A copy of this order be sent to Tehsildar, (Executive Magistrate 1st Class), Nagri Parole, to be taken on the record of the file and close the file as it is.

(RAHUL BHARTI)
JUDGE

JAMMU
07.05.2025
SUNIL