

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

CM(M) No. 136/2025

CM No. 3049/2025

Jai Krishan Singh & Anr.

.....Appellant(s)/Petitioner(s)

Through: Mr. Vikas Pankaj Sharma, Advocate

Vs

UT of J&K & Ors.

..... Respondent(s)

Through:

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

**ORDER
(23.05.2025)**

- 01.** The case in hand reflects a very sorry state of affairs in the matter of adjudication of a civil suit involving simpliciter relief of permanent prohibitory injunction read with temporary injunctions asked for therein.
- 02.** In the present case, the petitioners herein, as plaintiffs, came to file a civil suit for permanent prohibitory injunction aimed against three defendants namely, (i) State of J&K, through Commissioner Secretary, PW(R&B) Department, Government of J&K; (ii) Executive Engineer, PWD (R&B), Division Kishtwar and (iii) Assistant Executive Engineer, PWD(R&B), Sub-Division, Kishtwar, for restraining them from constructing any road through the suit land comprising khasra numbers 3882

measuring 03 kanals 04 marlas, 3888/1 min measuring 02 marlas and 3889 measuring 05 marlas and 3883 min measuring 04 kanals 05 marlas situated in village Phatna Palmar, tehsil and district Kishtwar

- 03.** The institution of the civil suit came to take place upon grant of permission by dispensing statutory notice under section 80(3) of the Code of Civil Procedure in terms of an order dated 13.09.2018 by the trial court of Sub-Judge, Kishtwar.
- 04.** In terms of an order dated 15.11.2018, the trial court of Sub-Judge, Kishtwar, in response to an application under Order 39 rule 1, 2 and 3 of Code of Civil Procedure, came to direct three defendants to maintain status-quo on spot with regard to the suit land to the extent of raising any construction of road through the suit land if the plaintiffs are in physical possession of the said land. This ad interim order dated 15.11.2018 is said to have continued in its effect and operation all along without disposal of application under Order 39 rule 1 and 2 CPC having taken place till date.
- 05.** The petitioners have come forward with the present petition being aggrieved of issuance of an order dated 13.02.2025 passed by the trial court of Sub-Judge, (Civil Judge, Sr. Division), Kishtwar passed in response to an

application filed by the official defendants seeking permission to complete the construction of link road namely **Mundalan to Khatan via Shahpora situated at Mouza Palmar tehsil and district Kishtwar.**

- 06.** The petitioners' grievance is that without putting the petitioners as being the plaintiffs to notice of filing of said application and affording them an opportunity of objection and hearing, the court of Sub-Judge, (Civil Judge, Sr. Division), Kishtwar came to pass an order dated 13.02.2025 by allowing the application and giving a go-ahead with the construction work of road which is supposed to pass through the suit land.
- 07.** Learned counsel for the petitioners draws the attention of this court to the sequence of the dates fixed in the civil suit to show that issuance of impugned order has taken place intervening two fixed dates i.e. 03.12.2024 and 17.02.2025 and thus, the impugned order came to be passed at the back of the petitioners as plaintiffs.
- 08.** This petition is, thus, ***disposed of*** at this stage by setting aside order dated **13.02.2025** so passed by the court of learned Sub-Judge, (Civil Judge, Sr. Division) Kishtwar, by directing the court of learned Sub-Judge, (Civil Judge, Sr. Division) Kishtwar to dispose of the pending application, under Order 39 rule 1 and 2 CPC of the

petitioners within a period of (30) thirty days from the date of receipt of copy of this order to be sent by Registrar Judicial, Jammu to the learned Sub-Judge, Kishtwar.

- 09.** Failure on the part of the court of learned Sub-Judge, (Civil Judge, Sr. Division) Kishtwar to dispose of pending application under Order 39 rule 1 and 2 CPC of the petitioners on merits shall be reckoned by this court to be disobedience of the directions so emanating from this court.
- 10.** Petition is accordingly, ***disposed of.***

JAMMU
23.05.2025
SUNIL

