

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 1607/2021

Pronounced on: 01.09.2025

**Bachan Singh Choudhary and
another**

.... Petitioner(s)

Through:- Mr. Atul Verma, Advocate

V/s

UT of J&K and others

.....Respondent(s)

Through:- Mr. S.S. Nanda, Sr. AAG

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

1. The petitioners are the owners of land measuring 01 kanal and 01 marla, bearing Khasra No. 192 min, Khewat No. 1, Khata No. 1, situated at Channi Rama, Tehsil and District Jammu. The petitioners claim to have acquired the aforesaid land by virtue of a registered sale deed dated 03.05.2005, which was duly registered before the Court of Sub-Registrar, City Judge, Jammu on 04.05.2005. Pursuant to the execution and registration of the sale deed, the mutation in respect of the land was also duly attested in favour of the petitioners on 14.05.2005.
2. It is submitted that since the date of purchase, the petitioners have been in peaceful, continuous and uninterrupted possession of the subject land and have laid a concrete foundation on the said plot.
3. It is further submitted that at the time of purchase, a pucca metalled road existed on the southern side of the petitioners' plot. However, the said road was washed away due to flood water, diverted towards

the lower side of the locality by residents of houses situated on the upper side.

4. The contention of the petitioners is that the respondents have initiated construction work for a drainage system to facilitate the flow of water during the rainy season and have proposed to make the Nallah where earlier road was existing. However, while constructing the Nallah, the respondents changed its direction near the petitioners' plot and diverted it towards their land, reportedly under the influence of other nearby residents. This diversion has resulted in encroachment of 2 marlas of the land of the petitioners which has come in Nallah.
5. Learned counsel for the petitioners submit that as a consequence of the said diversion, approximately 2 marlas of land of the petitioners' now fall under the new alignment of the drainage and are being encroached/utilized by the respondents without any authority of law. While the breadth of the Nallah at the upper side measures approximately 10–11 feet, its width has been expanded to about 21–22 feet directly in front of the petitioners' plot, thereby doubling its size arbitrarily and without any justification.
6. The petitioners, it is submitted, have repeatedly approached the respondents for redressal of his grievance and also submitted written representation to the concerned Executive Engineer but despite the same, no action has been taken till date.
7. Respondents in their objections, have opposed the contention raised by the petitioners by submitting that no portion of the land of the petitioners has been encroached upon during the construction of the

Nallah/Drainage System. The Nallah in question is being constructed as per the prescribed alignment along its natural flow from the National Highway near KC Hyundai to Channi Rama Road Crossing, passing through Pamposh Colony, under a languishing project.

8. It is further submitted that after spot verification, it was found that the construction of the Nallah walls, carried out in April 2021, the approved alignment was strictly adhered to. The respondents have also pointed out that as per the assertion of the petitioners, the length of the plot is 110 feet, however, upon verification by field staff and the concerned Assistant Executive Engineer/Junior Engineer, the actual length was found to be 112 feet. The construction of the Nallah wall was executed in the month of April and the petitioners approached them only in the month of June.
9. The respondents submit that the land in question was an open land and there was no demarcation of land by the owner, therefore, construction has not taken place on any demarcated private property. The RCC Nallah is being constructed with dimensions of 6.00x2.40 meters, in accordance with its natural course. It is further stated that the proposed Nallah is to be covered with an RCC slab to facilitate a motorable road, and no hazardous or objectionable situation will arise as a result of the construction.
10. So far as representation dated 29.06.2021, filed by the petitioners is concerned, the respondents submit that the same was duly examined and based on spot verification and the available record, the petitioners' claim was found to be without merit and was accordingly rejected vide order No. SDJW/4984-86 dated 07.10.2021.

11. The petitioners have sought a direction for construction of the Nallah Drainage System without diverting its original course, so that their land does not come under the alignment of the Nallah. In the alternative, the petitioners seek a direction to pay them compensation for the land utilized by the respondents as per the market value.
12. The respondents, while deciding the representation of the petitioners, have categorically denied the assertions on the ground that the Nallah has been constructed as per the alignment along its natural flow. The Nallah is to be constructed with an RCC slab to make it motorable, and there is no space left between the plot and the Nallah for any objectionable situation.
13. It is well settled that the jurisdiction of this Court under Article 226 of the Constitution of India is discretionary in nature, where disputed questions involved are of complex nature and their determination requires the evidence to be adduced. In such circumstances, a writ petition is not the appropriate remedy. The Hon'ble Apex Court in **'Gunwant Kaur vs. Municipal Committee, Bhatinda', (1969) 3 SCC 769**, has held as under:

"14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in *limine*. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioners right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the

High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection or a petition in *limine* will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.”

14. The claim of the petitioners regarding encroachment, and the denial by the respondents, has resulted in disputed questions of fact, which cannot be considered in these proceedings. This Court, in LPA(OW) No. 83/2013, titled ‘**Sanjay Kumar Gupta vs. State of J&K and others**’, decided on 23.04.2015, has held as under:

“8. As far as the prayer for payment of compensation is concerned, the facts are in dispute. It is not known how much quantity of the minor forest produce was stored and appellant sustained how much amount due to delay in issuing the transport permission. It is a well settled proposition of law that the disputed facts cannot be decided in a writ petition and the said issue is no longer *res integra*. Whether the High Court is entitled to go into the disputed questions of fact in a writ petition filed under Article 226 of Constitution of India, is already decided by Hon’ble the Supreme Court in the following decisions:-

(a) In **(1976) 1 SCC 292 (Arya Vyasa Sabha and Others v. The Commissioner of Hindu Charitable and Religious Institutions & Endowments, Hyderabad and Others)** the view taken by the High Court that disputed questions of fact are to be left open to be decided before the Civil Court was upheld by the Supreme Court.

(c) In **(2006) 9 SCC 256 (Himmat Singh vs. State of Haryana and others)**, Hon’ble the Supreme Court held that ‘the statement of the appellant or the 5th respondent was correct or not could not ordinarily be tested in writ proceedings and it is well known that in writ petition ordinarily such a disputed question of fact could not be entertained’.”

(d) In yet another decision reported in **(2006) 7 SCC 654 (Food Corporation of India vs. Harmesh Chand)**, the Supreme Court held as follows:

“Since the facts were seriously disputed by the appellant and no factual finding could be recorded without consideration of evidence adduced by the parties, it was not an appropriate case in

*which the High Court ought to have exercised its writ jurisdiction.
The parties could have approached a civil court of competent
jurisdiction to adjudicate the matter.”*

15. In view of the foregoing facts, circumstances and having regard to the well-settled legal position that disputed questions of fact cannot be adjudicated in writ proceedings, this writ petition is not maintainable and is, accordingly, dismissed.

(SINDHU SHARMA)
JUDGE

Srinagar:

01.09.2025

Vishal Khajuria

