

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT JAMMU**
(THROUGH VIRTUAL MODE)

CJ Court

LPA No.188/2025

KR. BALDEV SINGH

...PETITIONER(S)

Through: - Mr. Ashok Sharma, Advocate.

Vs.

MANGU RAM SHARMA AND OTHERS.

...RESPONDENT(S)

Through: - None.

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**ORDER
08.09.2025**

1) The appellant had filed a writ petition bearing OWP No.341/2008 for commanding the respondent No.1 and 2 to remove the unauthorized construction raised by the respondent No.5, on the ground that the said respondent had raised the construction without obtaining any permission from Akhnoor Municipality as the Ward No.13, wherein the respondent No.5 had allegedly constructed his house, was within the Municipal limits of Akhnoor. It needs to be noted that in the said writ petition, the appellant had also arrayed the Jammu and Kashmir Accountability Commission as respondent No.3 and had

also stated that the said respondent had wrongly dismissed his complaint in respect of illegal construction raised by the respondent No.5.

2) The writ petition came to be objected to by the respondent No.5 by stating that his house was situated in Khasra Nos.1282-min and 1348, which was owned by his wife and was not within the Municipal limits of Akhnoor. It was also stated that he had raised the construction of ground floor in the year 2000 and the first floor in the year 2002-2003 before the commencement of new session of school, which was being run in the house mentioned above. Precisely, the stand of the respondent No.5 was that he had raised construction of first floor of the school building before the issuance of SRO 45 and only Sungal Morh Mohalla is shown in the SRO and not whole of the village, which is in Patwar Rakh Badral.

3) The respondent No.1 and 2 also had filed their response stating therein that they were not competent in their individual capacity to remove any construction as sought by the appellant in view of the fact that respondent No.1 was no longer the President of Akhnoor Municipality and the respondent No.2 had superannuated. It was also stated that the respondent No.5 had constructed his

house during the year 2000 and later he added first floor during the year 2003 and had been running a school since 2001 for Nursery and K. G. classes. It was found from the record that Khasra No.1282 and 1348 mentioned in the complaint were beyond the municipal limits and the Municipal Act, 2000 was made applicable with effect from 18th February, 2003 only.

4) The respondent No.3 and 4 also filed their response stating therein that the houses of respondent No.5 and the appellant are outside the municipal limits. The Khasra numbers, in which the houses were situated, were not included within the limits of Municipal Committee, Akhnoor but the appellant and the respondent No.5 had managed to have their names included in the voter list during the course of Municipal elections and this aspect of the matter was duly considered by the J&K Accountability Commission and the complaint of the appellant was rightly dismissed.

5) The learned Writ Court, vide its order dated 04.07.2025, dismissed the writ petition preferred by the appellant.

6) The appellant has assailed the judgment passed by the learned Writ Court, primarily, on the ground that the

learned Writ Court had not taken note of the fact that the order of the J&K Accountability Commission dated 20th February, 2008, was based on patently incorrect finding that the property in question located in Mohalla Sungal Morh Ward No.13 did not fall within the territorial jurisdiction of the Municipal Committee, Akhnoor and further the voter list showing the appellant and the respondent No.5 as registered voters in Ward No.13 of Akhnoor Municipality, corroborated the stand of the appellant that the area where the respondent No.5 had raised unauthorized construction falls within the municipal limits of Akhnoor. It was also contended that the learned Writ Court, while dismissing the writ petition, has failed to address the inaction of the municipal officers i.e. respondent No.1 and 2 and the existence of an injunction by the civil court.

7) Heard learned counsel for the appellant.

8) The whole controversy revolves around the fact as to whether the land where the respondent No.5 has raised construction falls within the municipal limits or not. It needs to be noted that earlier the J&K Accountability Commission was arrayed as respondent No.3 in the writ petition but was subsequently deleted from the array of

respondents vide order dated 25th August, 2009. It is also borne from the record that the appellant has filed a civil suit for mandatory injunction for directing the respondent No.5 to close its six windows opening towards western side of the appellant's house and further restraining him from opening any window or door towards the house of the appellant. The said suit came to be instituted in the month of May, 2006. In the said suit, the respondent No.5 has also filed his written statement. Thus, admittedly, there is a civil dispute pending between the contesting parties. Further it is the positive stand of the respondent No.5 that the land over which the house was constructed and school had been functional, was owned by his wife i.e. respondent No.6 and the construction was raised prior to the session 2002-2003 of the school. The official respondents too have toed the stand of the respondent No.5. Being a disputed questions of facts, the writ petition filed by the appellant was misconceived, more particularly in view of the fact that he had already filed a civil suit against the respondent No.5.

9) We have examined the judgment passed by the learned Writ Court and are in perfect agreement with the finding returned by the learned Writ Court that a civil dispute is being sought to be settled by the appellant

through the medium of writ petition and the disputed questions of fact, as sought to be raised by the appellant, cannot be determined while exercising jurisdiction under Article 226 of the Constitution of India.

10) Viewed thus, we do not find any merit in this appeal and the same is dismissed accordingly.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Srinagar
08.09.2025
“Bhat Altaf”

