

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

**WP(C) No. 2537/2025
CM No. 5844/2025
CAV No. 2035/2025**

Anil Sharma

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

Through: Mr. Vikram Sharma, Sr. Advocate with
Mr. Sachin Dev Singh, Advocate.

Vs

UT of J&K and others

..... Respondent(s)

Through: Ms. Priyanka Bhat, Advocate vice
Ms. Monika Kohli, Sr. AAG for R- 1 to 6
Mr. Nonu S. Khera, Advocate for R- 7 and 8.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

**ORDER
15.09.2025**

ORAL

1. The petitioner, through the medium of instant petition, has sought following reliefs:

- a) *Mandamus: directing the Respondent Authorities to forthwith remove and demolish all illegal constructions, culverts, plinths, slabs and walls raised by the property dealer i.e. respondent Nos. 7 and 8 in collusion with the respondent authorities over the water course/Gair Mumkin Khad falling in Khasra No. 450 of Village Patti, Tehsil Bari Brahmana, District Samba, which is a gross violation of the Jammu and Kashmir Water Resources (Regulation and Management) Act, 2010 and with further Mandamus to restore the said water body/common land to its original natural form;*
- b) *Mandamus: directing the Respondent Authority i.e. Respondent No. 3 to 6 to take immediate steps for eviction of the private respondent Nos. 7 and 8 from the encroached 'Gair Mumkin Khad'/Water Course of Khasra No. 450 which is a property vested in Govt as per Section 3 of the Jammu and Kashmir Water*

Resources (Regulation and Management) Act, 2010 and village common lands and;

- c) In alternatively, to further prosecute and punish Respondent Nos. 7 and 8 and colluding official respondents for illegal encroachment over 'Gair Mumkin Khad'/Water-Course.*
- d) Pass such other writ, order or direction as this Hon'ble Court may deem fit and appropriate in the facts and circumstances of the case in the interest of justice, equity and good conscience.*

2. The case of the petitioner is that he is the owner in possession of the land measuring 12 Kanals (approx) in Khasra No. 453 of Village Patti, Tehsil Bari Brahmana, District Samba which falls adjacent to the 'Gair Mumkin Khad'/Water Course in Khasra No. 450, which stands vested in State by the mandate of Section 3 of the Jammu and Kashmir Water Resources (Regulation and Management) Act, 2010.
3. Further, it is case of the petitioner that the land of the petitioner in Khasra No. 450, situated adjoining to the private land under Khasra No. 453 is a Gair Mumkin Khad. The petitioner has further submitted that the respondent No. 7 who is a private colonizer/property dealer has been consciously encroaching upon the said "Gair Mumkin Khad" and raising illegal construction in the Khad in Khasra No. 450 of village Patti, in order to enhance his market potential by providing an access to his land in a different village Bagla Tehsil Vijaypur, District Samba.
4. The petitioner has levelled allegations against the respondent No. 7 that the respondent No. 7 has constructed the culvert over the Nallah and has further constructed a plinth on both sides of the Nallah by restricting its width from 300 ft to 10 ft in Khasra No. 450 of the

village Patti. It has been further pleaded that apart from encroachment in Khasra No. 450, the respondent No. 7 has also been encroaching upon the private land of the petitioner for which the petitioner has approached the court of learned Munsiff, Samba by way of a civil suit in which the learned trial court has passed order dated 26.07.2024, thereby directing maintenance of status quo on spot.

5. It has been urged by Mr. Vikram Sharma, learned Senior counsel along with Mr. Sachin Dev Singh, Advocate appearing for the petitioner that the respondent Nos. 7 and 8 in connivance with the official respondents have constructed walls and culverts over the Khad and have deployed their men and machinery to fast-track the encroachment and construction even during the mid-night with a view to escape the possibility of any action upon objections being raised by the villagers which includes the petitioner as well.
6. Learned Senior counsel appearing on behalf of the petitioner has further submitted that it is the settled proposition of law that wherever any water body i.e. any Pond or Nallah is being encroached, which is for the welfare of the villagers, an action is required to be taken by the official respondents, which action till date has not been taken. It has been further urged by the learned counsel for the petitioner that in pursuance to the consistent representations/complaints filed by the petitioner, the issue was addressed by the respondent No. 5 to the respondent No. 6 vide his communication dated 08.08.2025, wherein the concerned Naib Tehsildar, Bari Brahmana, District Samba directed

the respondent No. 6 to ensure that no further work or modification occur on the spot in Khasra No. 450 and 465.

7. Further, it is case of the petitioner that despite the aforesaid communication and the rider imposed by the respondent No. 5, the respondent Nos. 7 and 8 are illegally reducing the width of the Khad by raising construction therein by laying the slab over the said Khad and are still encroaching the said land with the support of the respondent authorities. It is further submitted that feeling aggrieved of the same, the petitioner has moved an application bearing CM No. 5101/2025 in WP(C) No. 1902/2024 seeking prevention of encroachment of Gair Mumkin Khad by the respondent No. 7 and to remove the encroachment, however, the same was heard and considered by a Coordinate Bench of this Court and the same was dismissed vide order dated 19.08.2025, by observing that the petitioner can move a separate remedy therefor. In light of the order dated 19.08.2025 passed by the Coordinate Bench, the instant petition has been preferred by the petitioner.

8. In addition, it has also been pleaded that the collusion of the respondent No. 8 with the respondent No. 7 is evident from the fact that they jointly filed a writ petition bearing WP(C) No. 2232/2025 titled Amarjit Singh Kukreja and others vs. UT of J&K and others, wherein the right to use of land under Khasra No. 450 was sought to be protected and the same according to the petitioner was silently withdrawn by the said respondents on 01.09.2025. With a view to fortify his claim, learned counsel for the petitioner has placed on

record the aforesaid order dated 01.09.2025 along with the instant petition.

9. With a view to advance his arguments, learned counsel for the petitioner has placed reliance upon the judgment passed by the Apex Court in case titled as **Hinch Lal Tiwari vs. Kamala Devi and others** Civil Appeal No. 4787 of 2001, wherein the Apex Court has held as under:

“13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature’s bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.”

10. Learned counsel for the petitioner has further drawn the attention of this Court to another order passed by the Hon’ble Apex Court in case titled as **Jagpal Singh Vs. State of Punjab and others** in Civil Appeal No. 1132/2011, wherein it has also been held that *water bodies and village commons such as ponds are community property meant for the collective benefit of villagers and cannot be encroached upon or allotted for private construction and the Apex Court in the aforesaid backdrop has deprecated such practice and any attempt in this regard to regularise such encroachment.*

11. In the aforesaid backdrop, Hon'ble Supreme Court has directed all the States and Union Territories to ensure speedy eviction of unauthorized occupants and restore water bodies and common lands to their original use, stressing that these traditional resources are vital for environmental balance, water conservation, and the welfare of rural communities.
12. Learned counsel for the petitioner has also drawn the attention of this Court to the order dated 18.03.2015 passed by the Division Bench of this Court in case titled as **Dharm Chand v. State of Jammu and Kashmir** in WP(PIL) No. 06/2014, wherein it has been held that *in all the cases where any attempt which is being made by the encroachers to change usage of the land with a view to deprive the petitioners and other villages of the benefit of these water bodies and common land of public utility used for common benefit of the villagers, direction has been issued to comply with the guidelines laid down by the Apex Court in Jagpal Singh Vs. State of Punjab and others.*
13. Learned counsel for the petitioner has further drawn the attention of this Court to the order passed by the High Court of Madras in case titled as **L. Krishnan vs. State of Tamil Nadu in WP No. 20186/2000**, wherein it has been held that *it should be the endeavour of the State to protect the material resources like forests, tanks, ponds, hillocks, mountains, etc. in order to maintain the ecological balance and such maintenance of ecological balance would pave the way to provide healthy environment, which would enable the people to enjoy a quality life which is essence of the right guaranteed under Article 21*

of the Constitution. As the State is under legal obligation to maintain the natural resources with a view to keep the ecological balance intact and thereby provide a healthy environment to the public at large.

14. Learned counsel for the petitioner, with a view to substantiate his claim, has placed reliance upon statutory provision contained in **Jammu and Kashmir Water Resources (Regulation and Management) Act, 2010**, a perusal whereof reveals that *the ownership of the water bodies vests with the Government, terminating any proprietary or user right* and thus the private respondents by no stretch of imagination can claim any right to alter or occupy the said Khad and that too in collusion with the respondent authorities, who according to the petitioner has permitted such construction which tantamounts to violation and is in derogation of the mandate of the aforesaid statutory provision and in light of the law laid down by the Apex Court in catena of judgments.
15. Heard Mr. Vikram Sharma, learned senior Counsel appearing along with Mr. Sachin Dev Singh, Advocate on behalf of the petitioner and perused the record.
16. Also heard Mr. Nonu S. Khera, learned counsel for the caveator. Caveat stands discharged.
17. Issue notice to the respondents, which is waived by Ms. Priyanka Bhat, Advocate appearing vice Ms. Monika Kohli, learned Senior AAG on behalf of respondent Nos. 1 to 6. Mr. Nonu S. Khera, Advocate waives notice on behalf of respondent Nos. 7 and 8.

- 18.** The learned counsel for the parties have agreed for disposal of the instant petition at the very threshold and with the consent of the learned counsel for the parties and in light of the averments made in the instant petition and the innocuous prayer made, this Court deems it appropriate to dispose of the instant writ petition at the threshold by directing the respondent No. 3 i.e. Deputy Commissioner, Samba to constitute a fresh Committee headed by the Tehsildar, Bari Brahmana, District Samba and may include any other Revenue Official concerned with the issue at hand, within a period of one week from today. The Committee so constituted by the respondent No. 3 shall visit on spot and thereafter conduct a detailed enquiry with respect to the allegations levelled by the petitioner in the instant writ petition and submit its report within four weeks thereafter.
- 19.** It is made clear that the enquiry shall be conducted by the Committee by associating the petitioner, private respondent Nos. 7 and 8 and any other person/stakeholder, who may have claim with respect to the land in question/issue at hand. The enquiry shall be concluded by the Committee within a period of four weeks thereafter and the Committee shall submit the enquiry report before the respondent No. 3, who shall take a decision thereon in light of the findings so recorded by the Committee constituted in this regard, in consultation with the Divisional Commissioner, Jammu (Respondent No. 2) within a period of two weeks, thereafter. The entire exercise shall be completed within a period of seven weeks from today.

20. It is further made clear that, in case, it is found that any water body i.e. Pond (Talab), Khad, River or Nallah (Water Channel) has been encroached upon by any illegal encroacher, then the respondent Nos. 2 and 3 shall be at liberty to proceed for removing the said encroachment forthwith in accordance with law and with a view to achieve the said purpose, in case, if any assistance of Police i.e. respondent Nos. 5 and 6 is required, the same can also be taken while carrying out the said exercise.
21. Needless to say that till the decision is taken by the respondent No. 3 in consultation with the respondent No. 2, in light of the findings so recorded by the Committee constituted, “status quo” as it exists today shall be maintained on spot and continuance of the interim protection shall be subject to outcome of the decision which is likely to be taken by the respondent No. 3 in consultation with the respondent No. 2.
22. Before parting, this Court deems it appropriate to observe that the petitioner and the respondent Nos. 7 and 8 or other stakeholder who have claim with the issue in question shall be at liberty to produce all the relevant documents/records, if required, which would facilitate the said Committee to conduct the detailed enquiry by addressing the issues raised in the instant petition and while conducting the enquiry, the Committee shall give due weightage to the Master Plan as well, which is in vogue and also the documents produced by the parties/stakeholders.
23. It is expected from the official respondents that this order shall be complied with in its letter and spirit within the time granted by this

Court and no further extension shall be granted on any count whatsoever, as the delay can cause collateral damage to either of the parties, which later on cannot be compensated by any means whatsoever.

24. The Registry is directed to convey this order to all the official respondents for its immediate compliance.
25. **Disposed of along with the connected application.**

(WASIM SADIQ NARGAL)
JUDGE

Jammu
15.09.2025
Sahil Padha

