

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

**WP(C) 146/2024
CM(253/2024)**

**Krishan Narayan Koul, aged 67 years
S/o Sh. Lambu Dhar Kaul
R/o H.No. 39, Exchange Road, Summander Bagh,
Srinagar.**

.....Petitioner(s)

Through:
None

Versus

- 1. Union Territory of Jammu and Kashmir
Through Financial Commissioner, Housing
and Urban Development Department, Civil
Sectt, Jammu/Srinagar.**
- 2. Commissioner, Srinagar Municipal
Corporation, Srinagar.**
- 3. Chief Enforcement Officer, Srinagar
Municipal Corporation, Srinagar.**

.....Respondent(s)

Through:
Mr. Bikramdeep Singh, Dy. AG

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER
11.11.2025

1. The petitioner, through the medium of the instant petition,
has sought the following reliefs:
 - a. **Writ of Prohibition**, commanding the respondents
not to interfere or cause any interference in fixing the
rooftop of the building and to allow the petitioner to

complete the work of roofing as per the building permission.

- b. **Writ of Mandamus**, commanding the respondents to pay the damages suffered by the petitioner due to the consistent interference in not allowing the petitioner to complete the construction as per the building permission.

2. The only grievance projected by the petitioner through the medium of the instant petition is that the petitioner, who claims to be a co-sharer and owner in possession of a building under Survey No. 111, Min, situated at Estate Kothi Bagh, has been holding the same for the last couple of years. The structure, being old in age, warranted repairs, renovation, and restoration by way of retrofitting for strengthening of the building and replacement of the worn-out wooden flooring with an RCC slab.
3. The further case of the petitioner is that the petitioner applied to the Srinagar Municipal Corporation to undertake such repairs, restoration, and renovation by way of retrofitting for strengthening of the building and replacement of the worn-out wooden flooring with an RCC slab and the same was endorsed on 26.12.2015.
4. It is the specific case of the petitioner that because of the circumstances prevailing in the State, particularly in the Valley, it was not possible to carry out the construction

work, including renovation and repairs, due to the floods of 2014 and the turbulence during 2016 and 2017. The petitioner could not commence the work despite the issuance of a formal direction by Respondent No. 2 to undertake such repairs.

5. The building permission granted to the petitioner vide Order No. 1568 of 2015 dated 22.12.2015 was valid for a period of three years. Since the petitioner could not complete the construction work within the stipulated time, he accordingly sought an extension of the building permission already sanctioned in his favour through the medium of an application submitted before the expiry date, which application was marked by Respondent No. 2, the Joint Commissioner (Planning), on 12.12.2018. The petitioner could not complete the repair work till the said permission was valid, and has now preferred the instant petition seeking permission to execute the work of the rooftop over the said structure strictly in light of the building permission, which has since expired.
6. Due to inaction on the part of the respondents, the petitioner had earlier approached this Court by way of Writ Petition registered as OWP No. 2360 of 2018, wherein this Court, vide order/judgment dated 21.12.2018, directed the respondents to decide the renewal of the building permission within a period of fifteen days, failing which the petitioner would be permitted to complete the construction strictly as per the

building permission issued vide Order No. 1568 of 2015 dated 22.12.2015. The petitioner, who claims to be a migrant, has not been allowed to raise construction and, thus, feeling aggrieved by the inaction on the part of the respondents, has preferred the instant petition.

7. Per contra, a reply stands filed on behalf of Respondents 2 and 3, wherein the respondents have raised a preliminary objection that the instant petition involves disputed questions of fact which cannot be adjudicated upon while exercising writ jurisdiction.
8. The respondents have further taken a specific stand that the building permission was granted vide Order No. 1568 of 2015 dated 24.12.2015, in terms whereof the petitioner and other co-sharers were granted permission for renovation, restoration, and repair of a four-storied commercial building having shops on the ground floor, by way of retrofitting for strengthening of the building and replacement of wooden flooring with an RCC slab.
9. The respondents have further taken a specific stand that the petitioner, on one hand, has stated that he made an application in the year 2018, and on the other hand, has taken the stand that he could not complete the work because of the abrogation of Article 370 and the COVID-19 pandemic. The respondents have, however, contended that both these events occurred much later in point of time, after the

building permission had already expired, and this aspect of the matter has been suppressed by the petitioner from the respondent corporation. The petitioner is stated to be claiming ownership on account of the lease in his favour as well.

10. The further stand taken by the respondents is that since the ownership of the petitioner has already ceased because of the expiry of the lease and also due to the declaration of the (ROSHINI ACT), “ultra vires” the petitioner, in a way, has abused the process of the court by filing the instant petition to give a legal colour to an otherwise illegal construction. Thus, the respondents have taken a specific stand in the reply that since the petitioner has already ceased to be the owner of the land in question, there was no question of allowing the petitioner to continue or raise construction of the building which is illegal, and also on the ground that the petitioner dismantled the existing structure completely and raised a fresh construction on spot in blatant violation of the building permission which has already expired.

11. The respondents while filing the reply affidavit have taken a specific stand which demolishes the case of the petitioner.

For facility of reference, the same is reproduced as under:

“It is submitted that the Tehsildar Nazool, Srinagar addressed a communication bearing No. AC-244/N/18 dated 01.12.2018 to the answering respondent No. 2 in terms whereof it has been stated that as per the record available in the office of Tehsildar Nazool, land measuring 5 marlas under Khasra No. 77, 99 (new) 111, plot No. 5 and 6 in Estate Kothi bagh was under the leasehold rights of Radha

Krishan Koul S/o Tara Chand Koul, Mohan Lal Koul, Hira Lal Koul, Krishan Lal Koul Sons of Lambodar Koul for commercial purposes and the lease for which had expired on 01.04.2014. Out of the said land, land measuring 3 Marlas and 259 sft had been vested under the Jammu and Kashmir Vesting of Ownership Act (ROSHNI ACT). It was stated that the above named persons had failed to apply for removal of license in time from 2014 for remaining area of 01 Marla 13 sft.”

12. Heard learned counsel for the respondents at length and perused the record.

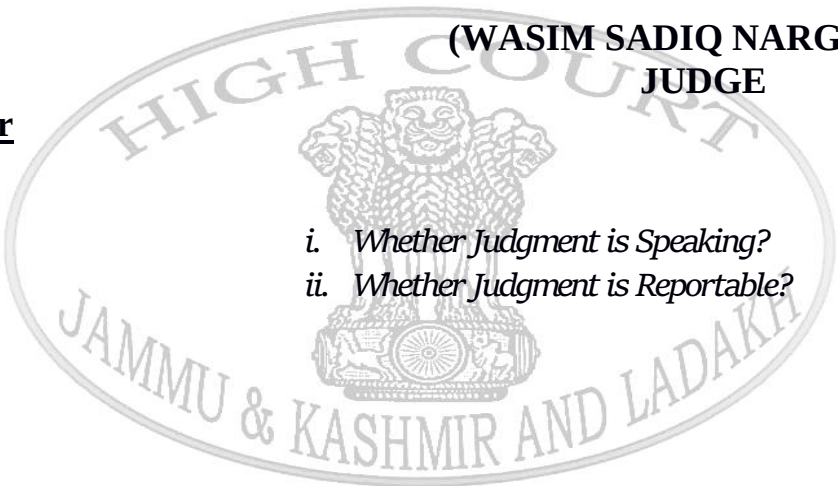
13. Since the petitioner, through the medium of the instant petition, has sought a writ in the nature of prohibition commanding the respondents not to interfere in fixing the rooftop of the building, with further permission to complete the work of roofing as per the building permission, and the relief which has been sought by the petitioner through the medium of the instant writ petition cannot be acceded to in view of the fact that the land measuring 5 marlas under Khasra No. 77, 99 (new) 111, plot No. 5 and 6, at Estate Kothi bagh, was under the leasehold rights of Radha Krishan Koul S/o Tara Chand Koul, Mohan Lal Koul, Hira Lal Koul, Krishan Lal Koul Sons of Lambodar Koul, for commercial purposes, and the said lease thereof expired on 01.04.2014. Out of the said land, land measuring 3 Marlas and 259 sft has already been vested under the Jammu and Kashmir Vesting of Ownership Act i.e., (ROSHNI ACT), and the persons had failed to apply for extension of the lease for the remaining 01 Marla 13 sft. Even the building permission which was already granted has also lost its validity.

14. The relief claimed by the petitioner is essentially based on a building permission that was issued in the year 2015 and has since expired. The petitioner admits that he could not complete the construction within the period of validity and has sought permission to now fix the rooftop on the basis of the building permission which stands already expired.
15. It is a settled principle that a person seeking a writ of mandamus or prohibition must show a clear and existing legal right. Once the permission granted has lapsed and the land itself is no longer under the subsisting lease of the petitioner, no such right survives for enforcement. A lapsed permission cannot confer a continuing entitlement to raise or complete construction.
16. The record further reveals that the lease of the land in question expired on 01.04.2014 and that a portion of the land already stands vested under the Jammu and Kashmir Vesting of Ownership Act i.e., ROSHINI ACT. In absence of a valid lease or ownership right, the petitioner cannot claim any authority to carry out construction or seek protection from interference.
17. Further, the Controversy raised also involves several disputed questions of fact including the exact extent of land vested. Such disputed matters cannot be conclusively determined in writ proceedings and require proper evidence before a competent forum.

18. Thus, in the light of the stand taken by the respondents, the relief claimed by the petitioner cannot be acceded to, as the lease of the petitioner has since expired, and the permission which was already granted for such repair has also lapsed.

19. In view of the above and considering the stand taken by the parties, the writ petition, being devoid of any merit, deserves dismissal. Accordingly, the writ petition is **dismissed** along with all connected applications.

Srinagar
11.11.2025
Sakeena-PS



(WASIM SADIQ NARGAL)
JUDGE

- i. *Whether Judgment is Speaking?*
- ii. *Whether Judgment is Reportable?*

Yes/No.
Yes/No.