

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

WP(C) 374/2025

Khadija and Ors.

...Petitioner(s)

Through: Mr. Altaf Mehraj, Advocate

Union Territory of J&K and Ors.

...Respondent(s)

Through: Mr. Bikramdeep Singh, Dy. AG with
Ms. Nowbahar Khan, Assisting Counsel

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER

11.09.2025

1. This is a writ petition by five petitioners as being successors-in-interest of one Ghulam Hassan Mir.
2. The purported cause of action for filing of this writ petition by the petitioners is passing of an order **No. DCA/MC/21-22/1625-29** dated **18.01.2022** by the respondent No.3-District Magistrate, Anantnag whereby removal of encroachment from land measuring 18 kanals and 19 marlas comprised in Survey No. 270 in the revenue estate Sallar, tehsil Sallar, District Anantnag has been directed to be carried out by the Tehsildar Sallar.

3. Said order dated **18.01.2022** has been passed by respondent No. 3 acting in exercise of power under section 4 and 5 of the **Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act 1997** (in short '**the Migrants Act 1997**') and is aimed against said Ghulam Hasan, the predecessor-in-interest of the petitioners who has been held to be in unauthorized occupation of the aforementioned land.
4. The aforesaid order has come to be in the hands of the petitioners in furtherance of an order dated **16.06.2023** passed in a writ petition **WP(C) No. 1523/2023** which was also preferred by the petitioners being aggrieved that without any order being notified to them they were sought to be evicted from the land in reference just on the basis of a notice served unto them.
5. The petitioners have averred in the present writ petition that although the respondent No. 3's order dated **18.01.2022** is amenable to statutory appeal under the Migrants Act 1997 but since said order has been passed without any notice to the petitioners and further that remedy of appeal under section 7 of the Migrants Act 1997 is not an alternate and efficacious

remedy, so therefore writ petition is being preferred by them.

6. It is also pleaded by the petitioners that by the time they came to get certified copy of said order dated **18.01.2022** because of intervention of this court in terms of order dated **14.06.2023** in the writ petition **WP(C) No. 1523/2023**, the limitation period prescribed for availing statutory remedy of appeal, had come to lapse for the petitioner to file an appeal against the order dated **18.01.2022**.

7. The petitioners have set up a case that Ghulam Hassan Mir, their predecessors-in-interest had been put in possession of land. 18.19 kanals under survey No.270 in Sallar by its owners way back in 1990s who are respondents 5-9 as being Kashmiri Pandit Migrants. In this regard, the petitioners refer to an agreement to sell dated **06.03.2002** purportedly made in favour of said Ghulam Hassan Mir by the respondents No. 5-9.

8. In terms of this purported agreement to sell dated **06.03.2002** claimed to have been made by the respondents No. 5 to 9 in favour of said Ghulam Hassan Mir the predecessors-in-interest of the petitioners herein, it is said to have been accompanied

with payment of an amount of Rs. 5,75,000/- as part payment as pleaded in paragraph 7 of the writ petition but before that also an amount of Rs. 3.00 lacs vide cheque no. **2662897** dated **04.03.2002** in favour of the respondent No. 9-Avatar Krishan Raina is said to have been given and post said Agreement to Sell dated **06.03.2022**, a cheque No. **2663020** dated **24.04.2002** for an amount of Rs. 3,15,000/- again in favour of respondent No. 9-Avatar Krishan Raina is said to have been given by said Ghulam Hassan Mir in order to demonstrate the fact that the said Ghulam Hassan Mir had actually made a deal for purchase of the land in reference with the respondents No. 5 to 9 by advancing them the payment in the manner as referred above. However, there is no recital in the writ petition as to whether the said two cheques were actually encashed by the respondent No. 9-Avatar Krishan Raina or not.

9. It is in this backdrop of facts and circumstances that respondents No. 5-Jawahar Lal Raina and No.6-B.N.Raina are said to have submitted an Online complaint with respect to protection of their migrant property in the form of land referred above which came to be taken cognizance by the respondent No. 3-

District Magistrate, Anantnag who on the basis of a purported inquiry came to hold said Ghulam Hassan Mir to be in unauthorized occupation and encroachment of the respondents No. 5 to 9's land in reference and warranting eviction there from.

10. This outcome came to be announced by the respondent No. 3-District Magistrate, Anantnag in terms of the impugned order No. **DCA/MC/21-22/1625-29** dated **18.01.2022**.

11. After passing of the aforesaid impugned order, said Ghulam Hassan Mir is said to have expired in April, 2022.

12. The petitioners, as being successors-in-interest of Ghulam Hassan Mir, came forward with the institution of a writ petition **WP(C) No. 1923/2023** bearing a purported grievance that they were not aware of the text and context of the order No. **DCA/MC/21-22/1625-29** dated **18.01.2022** so passed by the respondent No.3-District Magistrate, Anantnag warranting eviction from the land in reference of the respondents No. 5 to 9.

13. Said writ petition **WP(C) No. 1923/2023** came to be disposed of by the writ court by virtue of an order dated **14.06.2023** with a direction to the writ

respondent therein i.e., District Magistrate, Anantnag to provide a copy of the order No. **DCA/MC/21-22/1625-29** dated **18.01.2022** to the petitioners.

14. Accordingly, said order dated **18.01.2022** came to be so provided and in turn has resulted in the institution of the present writ petition by the petitioners to assail the same by pleading that they are not resorting to statutory remedy of appeal under Section 7 of the Migrants Act 1997 as the said remedy has become time barred and also not being an efficacious remedy in the facts and circumstances of the case.

15. The petitioners seems to have become a judge in their own cause by holding that the statutory remedy of appeal provided under section 7 of the Migrants Act 1997, is not an efficacious remedy, and therefore, they are coming forward with the present writ petition to assail the impugned order No. **DCA/MC/21-22/1625-29** dated **18.01.2022**. In addition the petitioners further say that the remedy of appeal has become time barred and, therefore, they are invoking the judicial review jurisdiction of this Court.

16. There is no doubt to the fact that the period of limitation prescribed for assailing the order No.

DCA/MC/21-22/1625-29 dated **18.01.2022** under the Migrants Act 1997 has expired for which this Court can lend its equitable jurisdiction in favour of the petitioners but surely the petitioners cannot be heard to say that statutory remedy of appeal is not an efficacious remedy at their disposal.

17. The Jammu and Kashmir Migrant Immovable Property (Preservation, Protection & Restraint on Distress Sales) Act 1997 provides a mechanism for passing of an original order and remedy of an appeal against such an original order and therefore, becomes a part of an organic mechanism of adjudication after exhausting which an aggrieved party can seek judicial review indulgence of this Court under Article 226 of the Constitution of India.

18. If statutory remedy of appeal is skipped by an aggrieved party then under the judicial review jurisdiction this Court may not have the advantage of knowing the appellate authority point of view with respect to adjudication of the original cause and this is where the other side may suffer a prejudice or for that matter even an aggrieved party may suffer a prejudice.

19. In the light of the aforesaid this Court, therefore, is not inclined to entertain this writ petition which is dismissed with liberty reserved in favour of the petitioners to avail statutory remedy of appeal within a period of thirty days from the date of passing of this order and in case of the said appeal being preferred within the time hereby given then the limitation shall not come in the way of the petitioners in maintaining their appeal and the appellate authority shall hear the appeal on merits.

20. Disposed of, as such.

(RAHUL BHARTI)
JUDGE

SRINAGAR:

11.09.2025

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