

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
LPA 73/2024

In [WP(C) 1015/2022]

Date of Pronouncement: 09.12.2025

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1. Abdul Qayoom Beigh
S/O: Kali @ Katji Bibi
R/O: Sonwar, Srinagar.

2. Habib Ullah Beigh
S/O: Kali @ Katji Bibi
R/O: Sonwar, Srinagar.

...Appellant(s)

Through: Mr. Hamza Prince, Advocate



Vs.

सत्यमेव जयते

1. Union Territory of J&K through
Commissioner Secretary to
Government, Revenue Department,
Civil Secretariat, Srinagar.
2. Divisional Commissioner, Kashmir.
3. Deputy Commissioner, Srinagar.
4. Tehsildar, South, Srinagar.
5. Cantonment Board, Badami Bagh,
Srinagar through its President.
6. Chief Enforcement Officer,
Cantonment Board, Badami Bagh,
Srinagar.
7. Defense Estate Officer, Badami Bagh
Cantonment Board, Srinagar.
8. Shahnaz Akhtar
D/O: Mohammad Ramzan Sofi
R/O: B.B. Cantonment, Sonwar,
Srinagar.
9. Zeenat Rasool
D/O: Mohammad Ramzan Sofi
R/O: B.B. Cantonment, Sonwar
Srinagar.

...Respondent(s)

Through: Mr. T.M. Shamsi, DSGI
Mr. B.A. Bashir, Sr. Advocate with
Mr. Azeem Rasic Nabi, Advocate
Mr. Bikramdeep Singh, Dy. AG
Mr. Waseem Gul, GA
Mr. Mohd Younis Hafiz, Assisting Counsel

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

ORDER (ORAL)

09.12.2025

1. This intra-court appeal filed by the appellants arises from an order and judgment dated 22nd December, 2023 passed by a learned Single Judge of this Court [“the writ Court”] in WP(C) No. 1015/2022 c/w WP(C) No. 878/2021 in case titled **“Abdul Qayoom Beigh and Anr. Vs. Union Territory of J&K and Ors.”** whereby the writ Court has dismissed the writ petitions filed by the appellants to throw challenge to the building permission granted by the Cantonment Board in favour of the respondents No. 8 & 9 dated 15th October, 2018, which was subsequently extended vide order dated 2nd March, 2022.

2. Briefly stated, the facts leading to the filing of this appeal under Clause 12 of the Letters Patent are that the predecessors-in-interest of the appellants and the respondents No. 8 & 9 are co-owners in possession of land measuring 6 Kanals situated at Sonwar, Srinagar, out of which 4 Kanals have fallen to the share of the respondents No. 8 and 9 and 2 Kanals along with *Shamilat* land on a pro-rata basis has fallen in the share of the appellants.

3. With a view to construct a commercial building, the respondents No. 8 and 9 applied to the Building Construction Authority of the Cantonment Board. They were granted

building permission vide order dated 15th October, 2018. The respondents No. 8 and 9 could not raise the construction during the period stipulated in the building permission and, therefore, approached the Cantonment Board for extension. Since the extension was not granted by the Cantonment Board, as such, respondent No. 8 approached the civil Court by way of a civil suit titled **“Shahnaz Akhter Vs. Cantonment Board BB Cantt. Srinagar and Ors.”**

4. The Court of learned 1st Civil Subordinate Judge/Municipal Magistrate, Srinagar [“the Civil Court”] vide its interim order restrained the Cantonment Board from causing any interference in the raising of construction by the respondent No. 8 [“plaintiff in the suit”].

5. This interim order was passed by the trial Court notwithstanding that building permission granted in the year 2018 had not been formally extended by the Cantonment Board. This order of the civil Court was called in question by the appellants herein in CM (M) No. 136/2021. A Bench of this Court vide order dated 17th September, 2021 stayed the impugned order passed by the civil Court but directed the Cantonment Board to decide the application of the respondent No. 8 for extension of building permission granted in the year 2018.

6. While the aforesaid petition was pending consideration, the Cantonment Board granted the extension to the building permission in terms of order dated 2nd March, 2022. This

building permission was granted notwithstanding serious objections raised by the appellants to the title of the property.

7. Be that as it may, on the building permission having been granted vide order dated 2nd March, 2022, the petition filed by the appellants i.e., CM(M) No. 136/2021 came to be dismissed by a Bench of this Court vide order dated 21st April, 2022.

8. Not deterred by the dismissal of the CM (M) No. 136/2021, the appellants filed WP(C) No. 878/2021 and WP(C) No. 1015/2022 to throw challenge both to the order of granting building permission and the order of extension passed thereafter. These petitions were adjudicated upon by the writ Court, who having considered the rival contentions, came to the conclusion that the dispute raised by the appellants was of civil nature capable of being determined and adjudicated by a civil Court where the parties were already litigating.

9. The writ Court, however, did not find any fault with the grant of extension of the building permission in favour of the respondents No. 8 and 9 and, accordingly, dismissed both the writ petitions observing that the dispute involved qua the title of the subject property was capable of being resolved in a civil litigation. It is this judgment which has been called in question before us.

10. Having heard learned counsel for the parties and perused the material on record, we are of the considered

opinion that the impugned judgment was passed by the writ Court on 22nd December, 2023, and an appeal filed by the appellants against this judgment was considered on 27th March, 2024, when a notice was issued to the respondents to appear and contest the appeal. There was no interim order of stay passed by this Court. It is not in dispute that during the pendency of this appeal the respondents No. 8 and 9 have completed the construction as per the building permission granted.

11. In view of the aforesaid development, this appeal has become virtually a fait accompli. It is, therefore, not feasible at this stage to turn the clock back. That apart, the grant of building permission or its extension for a further period of one year by the Building Permission Authority of the Cantonment Board and subsequent raising of the construction by the respondents No. 8 and 9 cannot be construed to be a confirmation of title in favour of respondents 8 and 9 qua the property in respect of which the permission has been granted. The permission shall be deemed to have been granted by the Building Permission Authority of the Cantonment Board on the *prima facie* satisfaction of the title. It cannot be denied that there is a serious dispute with regard to the title between the appellants and the respondents No. 8 and 9 and the parties are litigating before the civil Court.

12. While we do not find any legal infirmity in the judgment impugned passed by the writ Court, yet we would like to

clarify that the grant of building permission/extension in favour of respondents No. 8 and 9 and raising of construction on the subject land is not a confirmation or proof of the title of the respondents No. 8 and 9 to hold the subject property exclusively. In case the appellants succeed before the civil Court in establishing their title to the property over which the respondents No. 8 and 9 have raised their construction, they would be entitled in law to the restoration of possession along with building raised thereon without any payment of compensation to the appellants. This is however the matter which needs to be determined by the civil Court in accordance with law. Having regard to the nature of the controversy involved, it is expected that civil Court which is seized of the matter will expedite the trial of the matter.

13. With these observations this appeal is **disposed of**.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

09.12.2025

"Mir Arif"

- (i) Whether the order is reportable? Yes/No.
- (ii) Whether the order is speaking? Yes/No.