

Serial No. 28.
Reg Cause List.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(2389/2025) IN WP(C) 623/2025
CM(1524/2025) CM(5381/2025).

01. RAFIQ AHMAD BHAT AND ORS. (Age 38 years)
02. FAROOQ AHMAD BHAT. (Age 36 years)
03. NISAR AHMAD BHAT. (Age 30 years)
S's/o GHULAM MOHAMMAD BHAT
R/o FIRDOUSABAD BAMALOO, SRINAGAR.

...Petitioner (s)

Through: Mr. M. Sultan, Advocate.

VERSUS

01. SRINAGAR MUNICIPAL CORPORATION th. Its
SECRETARY
02. COMMISSIONER SRINAGAR MUNICIPAL CORPORATION SMC KARAN NAGAR
SRINAGAR.
03. JOINT COMMISSIONER, SRINAGAR MUNICIPAL CORPORATION KARAN NAGAR
SRINAGAR.
04. CHIEF ENFORCEMENT OFFICER
SMC, KARAN NAGAR, SRINAGAR.
05. WARD OFFICER, WARD NO. 28,
SMC, BATMALOO, SRINAGAR.
06. NOOR MOHAMMAD BHAT
S/O GHULAM MOHAMMAD BHAT
R/O FIRDOUSABAD MATMALOO, SRINAGAR.

Through: Mr. Bikramdeep Singh, Dy. AG for R- 1 to 5.
Mr. Nissar Ah, Advocate for R-6.

...Respondent(s)

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

ORDER
29.08.2025

01. This petition has been filed by the petitioners for restraining the official respondents from interfering or causing any interference in the smooth erection of the residential house of the petitioners in accordance with the terms of the building permission dated 1st of March 2023 issued in their favour.

02. Precisely, the claim of the petitioners projected in the present petition is that they are absolute owners in possession of the land measuring 1 kanal and 11 marlas comprising survey NO. 2378/479 of Estate Batamaloo and the official respondents have also issued the building permission in their favour dated 1st of March 2023, after receiving requisites NOCs from the concerned authorities. Their only grievance is that despite sanction having been granted by the municipal authorities, the respondents are causing undue interference in the raising of the construction by the petitioners. The petitioners have also placed on record another building permission bearing No. SMC/2023/1137 dated 23rd of January 2023 in respect of the construction of the residential house.

03. The official respondents have filed their reply wherein they have admitted that building permission was granted in favour of the petitioners vide Building Permission No. SMC/20223/1230 dated 1st of March 2023, for raising a two-storied residential house with an attic, after dismantling two existing double-storied structures and erection of a compound wall, on land measuring 3145 sq.ft. comprising under Survey Nos. 2318 BTA479 situated at Estate Batamaloo, Srinagar. It is further submitted that upon a site visit conducted by respondent No. 5 (Ward Officer), it was found that the petitioners have now started dismantling the attic floor of the existing old residential structure. To substantiate this fact, the concerned officer obtained a GPS-enabled photograph depicting the dismantling of the attic floor of the existing old residential house. It is also the stand of the official respondents that as on spot, no construction was going on, therefore, the question of causing any interference in the construction process does not arise at all.

04. Respondent No.6 has filed the response stating therein that one Ghulam Mohd. Bhat, was the owner in possession of residential houses along with the land underneath and appurtenant thereto measuring 03 kanals and 04 marlas comprising Survey No. 2378/479, 2377/479 and 2690/475 situated at Batmaloo, Srinagar and the petitioners taking undue advantage of the ailment of their father have fraudulently got gift executed for whole of the property in their favour excluding the other legal heirs and the answering respondent from their ancestral property. The respondent No.6 after gaining the knowledge of the aforesaid gift deed has challenged the same before the Civil Court, and the suit is still pending before the court. It is further stated that respondent No.6 was under bona-fide belief that the property continued to be joint but was shocked when the petitioner started raising construction on the joint property and on enquiry, he came to know that the building permission stood issued in favour of the petitioner. It is also the stand of respondent No.6 that pursuant to the building permission dated 1st of March, 2023, the petitioners have already raised and completed the constructions but under the garb of aforesaid permission, the petitioners have started raising construction of another residential house.

05. Mr. Sultan, learned counsel for the petitioners has submitted that the petitioners are raising construction in terms of sanction dated 1st of March 2023 and the respondents cannot cause any interference in the same.

06. Mr. Nissar Ahmad Bhat, learned counsel for respondent No.6 has further submitted that another building permission dated 23rd of January 2023 is in fact pertains to the same piece of land regarding which permission dated 1st of March, 2023 was granted by the official respondents.

07. Heard learned counsel for the parties and perused the record.

08. It is the admitted fact that respondent No.6 has filed a suit which is pending before the court of learned Sub-Judge (Special Mobile Magistrate), Srinagar in respect of the land measuring 03 kanals and 4 marlas comprising of Survey numbers as mentioned above. The whole controversy hinges around the fact as to whether under the garb of permission dated 1st of March 2023, the petitioners are raising another construction without obtaining any fresh permission from the Municipal Authorities or not. The official respondents have in uncertain terms stated that no construction is/was being raised on spot when respondent No.5 visited the spot. The respondent No.6 has stated that the building permission dated 1st of March 2023 was already acted upon by the petitioners for the purpose of raising construction and they have started raising fresh consideration under the garb of the building permission dated 1st of March, 2023 already acted upon by the petitioners. It is also the contention of the respondent No.6 that another building permission dated 23rd of January, 2023 in fact pertains to the same piece of land regarding which permission dated 1st of March, 2023 has been granted by the official respondents.

09. Being the disputed questions of facts as to whether both these building permissions i.e. 1st of March, 2023 and 23rd of January 2023 have been granted in respect of the same piece of land or not, this Court is not in a position to determine the said controversy.

10. In view of the above, the present petition is disposed of in terms of the following directions;

01. That the official respondents to examine the issue as to whether both the building permissions pertain to the same piece of land or not. In the event, it is found that both building permission pertains to the same piece of land, they shall proceed in accordance with the law.

02. That the official respondents shall ensure that no unauthorized construction is raised by the petitioners without permission from the competent authority.

11. At this stage, Mr. Nissar Ah Bhat, learned counsel appearing for respondent No.6 submits that petitioners cannot raise the construction and if they are permitted to do so, his suit shall be rendered infructuous. So far as this contention of respondent No.6 is concerned, respondent No.6 is well within his right to approach the learned trial court for redressal of his grievances, if any.

12. Disposed of.

(Rajnish Oswal)
Judge

SRINAGAR
29.08.2025
Showkat Khan