

S.No. 33

Regular List

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

WP(C) 890/2025
CM(2332/2025)

ABDUL RASHID MALIK
S/O ABDUL GAFFAR MALIK
R/O HAYAN TEHSIL TREHGAM DISTRICT
KUPWARA-193224

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

Through: Mr. Muzaffar Hamid Bhat, Advocate

Vs.

1. UNION TERRITORY OF JAMMU & KASHMIR THROUGH COMMISSIONER SECRETARY TO GOVT. PW (R&B) DEPARTMENT CIVIL SECTT SRINAGAR/JAMMU ...Respondent(s)
2. SUPERINTENDING ENGINEER PW (R&B) DEPARTMENT CIRCLE KUPWARA
3. EXECUTIVE ENGINEER R&B DIVISION KUPWARA
4. ASSISTANT EXECUTIVE ENGINEER R&B SUB DIVISION TREHGAM DISTRICT KUPWARA.
5. DISTRICT DEVELOPMENT COMMISSIONER KUPWARA
6. TEHSILDAR TREHGAM DISTRICT KUPWARA
7. STATION HOUSE OFFICE POLICE STATION TREHGAM DISTRICT KUPWARA

Through: Mr. Rahila Khan, Advocate vice
Mr. A.R. Malik, Sr.AAG

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL,JUDGE

ORDER

28-04-2025

1. The instant petition has been filed by the petitioner wherein he is aggrieved of a notice No. 15-18-STD dated 16.04.2025 issued by Assistant Executive Engineer PW (R&B) Sub-Division, Trehgam directing the petitioner to remove construction of shop within a period of one day from the dispatch of the notice and in default, the same shall be removed at the petitioner's risk and cost as also aggrieved of a consequent communication No. 389-94 dated 17.04.2025 issued by the Executive Engineer R&B Division Kupwara in

terms whereof the Teshildar, Trehgam has been requested to provide the field functionaries of the Division along-with the police protection/concerned patwari halqa for dismantling of the petitioner's shop.

2. The petitioner, invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, has assailed the impugned notice bearing No. 15-18-STD dated 16.04.2025, along with the subsequent communication No. 389-94 dated 17.04.2025. The grievance of the petitioner, as projected in the present writ petition, is that the respondents have initiated coercive action for the demolition of his commercial establishment, purportedly without affording him an opportunity of being heard and without adhering to the mandate of due process of law.
3. It is the petitioner's contention that the impugned action is arbitrary, violative of the principles of natural justice, and infringe upon his fundamental rights guaranteed under Article 14 and Article 19(1)(g) of the Constitution. The petitioner further avers that no prior notice or show-cause communication was served upon him before proceeding to take steps towards the proposed demolition, thereby rendering the entire action ex facie illegal and liable to be quashed.
4. With a view to proceed further in the matter, this Court deems it appropriate to first scrutinize the impugned notice. A careful perusal of the said notice reveals that the alleged encroachment pertains to a public thoroughfare, which is designated for public

use and maintained by the appropriate authority (R&B Department).

5. It is a well-settled principle of law that no individual has the right to encroach upon public land or property that is meant for common use, such as roads, footpaths, or other public utility areas. Encroachments upon such property not only hinder the free movement of the general public but also amount to a violation of statutory obligations imposed on civic authorities to keep such areas free from obstruction.
6. Recently, the Hon'ble Supreme Court of India, in the exercise of its powers under Article 142 of the Constitution, in the case titled *Re:Directions in the matter of demolition of structures* reported as 2024 INSC 866 has laid down comprehensive guidelines to ensure that due process of law is scrupulously followed in cases involving the demolition of private properties. These guidelines aim to safeguard the rights of citizens by mandating that appropriate procedures, including the issuance of notices, provision of hearings, and adherence to statutory requirements, be followed prior to the demolition of properties.
7. However, it is pertinent to note that in Paragraph 91 of the aforesaid judgment, the Hon'ble Supreme Court, while issuing the aforementioned guidelines, has clarified that the directions shall not apply in cases involving unauthorized structures situated in public places, such as roads, streets, footpaths, areas abutting railway lines, river bodies, or any water bodies. Additionally, the Court has specified that these guidelines will

not extend to situations where an order of demolition has already been issued by a competent Court of law.

The relevant para is given as under:

91. At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.

8. In such cases, where the encroachment is prima facie on public land specifically, a public road, the civic authority is not under a mandatory legal obligation to issue a show-cause notice to the encroacher before initiating removal proceedings. The requirement of natural justice, including the issuance of notice and opportunity to be heard, is not absolute and may be curtailed where the encroachment pertains to public property and the urgency or public interest demands immediate action.
9. Accordingly, the Court is of the view that in the present case, since the encroachment is upon a public road, the issuance of a prior notice to the petitioner was not warranted. The action of the respondent authority, therefore, does not suffer from procedural impropriety or arbitrariness, insofar as it pertains to the non-issuance of notice.
10. Thus, considering the aforementioned legal principles and also in light of the judgment supra passed by the Hon'ble Supreme Court, this court is not inclined to exercise its inherent jurisdiction under Article 226 in the instant petition and the same is devoid of any merit and deserves dismissal.

11. Accordingly, the writ petition is dismissed in *limine* along with all miscellaneous application/s.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:

28-04-2025

Mubashir

- i. Whether the order is speaking: Yes/No
- ii. Whether the order is reportable: Yes/No

