

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

Case No. :- WP(C) No. 1238/2025

Reserved on: 24.09.2025

Pronounced on: 31.10.2025

Uploaded on: 31.10.2025

*Whether the operative part
or full judgment is pronounced?* **Full**

**Inhabitants cum Estate Holders of
Village Khimber Th. Hilal Ahmad
Bhat, Age 55 years, S/o Abdul
Rahim Bhat, R/o Khimber,
Hazratbal, Srinagar &**

.... Petitioner(s)

**Farooq Ahmad Ganie, Age 50
years, S/o Habib Ul lah Ganie,
R/o Khimber, Hazratbal, Srinagar.**

Through:- Mr. Tasaduq H. Khawaja, Sr. Adv. with
Mr. Imaan Abdul Muizz, Adv. &
Mr. Naseer Ul Akbar, Advocate.

V/s

- 1. UT of Jammu and Kashmir Th. Commissioner Secretary to Govt., Revenue Department, Civil Sectt., Jammu/Srinagar. Respondent(s)**
- 2. Financial Commissioner (Revenue), J&K, Tankipora Srinagar Kashmir.**
- 3. Divisional Commissioner Kashmir Srinagar.**
- 4. Deputy Commissioner, Srinagar Kashmir.**
- 5. Tehsildar North, Hazratbal, Srinagar Kashmir.**
- 6. Patwari Halqa Khimber Hazratbal, Srinagar Kashmir.**
- 7. Sub Registrar, East Tankipora, Srinagar.**

Through:- Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majid, Assisting Counsel.

Case No. :- WP(C) No. 692/2025

**1. Bashir Ahmad Mir, Aged 70 years,
S/o Mohammad Subhan Mir**

.... Petitioner(s)

2. **Abdul Gaffar Reshi, Aged 65 years,
S/o Mohammad Sultan**
3. **Gh. Mohammad Wani, Aged 75 years,
S/o Asadullah Wani**
4. **Abdul Rehman Dar, Aged 72 years,
S/o Ghulam Ahmad**
5. **John Mohammad Ganaie, Aged 35 years,
S/o Habibullah Ganaie**
6. **Ab. Ahad, Aged 80 years, S/o Ghulam
Ahmad Reshi**
7. **Ali Mohammad Mir, Aged 65 years,
S/o Khazir Mohammad**
8. **Mohammad Akbar Dar, Aged 90 years,
S/o Ghulam Ahmad Dar**
9. **Ab. Ahad, Age 80 years, S/o Ghulam Nabi
Reshi**
10. **Ghulam Mohammad Bhat, Aged 55 years,
S/o Jalal Ud Din Bhat**
11. **Fayaz Ahmad, Aged 55 years,
S/o Ghulam Mohd. Reshi**
12. **Riyaz Ahmad Ganaie, Aged 43 years,
S/o Habibullah Ganaie**
13. **Ghulam Mohi Ud Din Aged 60 years,
S/o Ghulam Ahmad Reshi**
14. **Ghulam Mohammad Reshi, Aged 65 years,
S/o Bashir Ahmad**

All residents of Khimber Srinagar Kashmir.

Through:- Mr. Tasaduq H. Khawaja, Sr. Adv. with
Mr. Imaan Abdul Muizz, Adv. &
Mr. Naseer Ul Akbar, Advocate

V/s

1. **UT of Jammu and Kashmir Th. Commissioner
Secretary to Govt., Revenue Department, Civil
Sectt., Jammu/Srinagar.** Respondent(s)
2. **Financial Commissioner (Revenue), J&K,
Tankipora Srinagar Kashmir.**
3. **Divisional Commissioner Kashmir Srinagar.**
4. **Deputy Commissioner, Srinagar Kashmir.**

5. Tehsildar North, Hazratbal, Srinagar Kashmir.

6. Patwari Halqa Khimber Hazratbal, Srinagar Kashmir.

7. Sub Registrar, East Tankipora, Srinagar.

Through:- Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majid, Assisting Counsel.

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. Having regard to the controversy involved in the instant petitions concerning the same subject matter, inasmuch as the reliefs sought, the petitions are being taken up together for disposal with the consent of the appearing counsel for the parties, while WP(C) No. 1238/2025 has been filed in the representative capacity with the leave of the Court, WP(C) No. 692/2025 has been filed by the petitioners in their individual capacity.

2. CCP No. 201 of 2025 accompanying the instant petitions has been filed by the petitioners in WP(C) No. 1238/2025 (supra), alleging therein violation of the interim order passed by this Court on 27.05.2025.

(i) WP(C) No. 1238/2025

The petitioners in the instant petition have prayed for following reliefs:-

- a. *By issuance of writ, order or direction one in the nature of certiorari, the Govt. order bearing No. 03-FC (Rev.) of 2024 dated 24.04.2024 issued by respondent No. 2 be quashed particularly in so far as it restrains issuance of revenue extracts qua section 5 shamilat Land falling under Survey Nos. 742, 743, and 747 situated at Khimber Srinagar Kashmir.*
- b. *By issuance of writ, order or direction one in the nature of mandamus, the respondents be commanded to issue or cause to issue the revenue extracts in respect of Shamilat Deh land (Sec. 5) in favor of estate holders to the extent of land falling under Survey Nos. 742, 743, and 747 situated at Khimber Srinagar Kashmir which is recorded in the revenue records in their possession, occupation and ownership strictly in accordance with*

orders passed by the Divisional Commissioner Kashmir in the matter.

- c. An appropriate writ commanding respondent No. 4 to produce copy of the report compiled by him before the Hon'ble Court so that matter is taken to logical end.*
- d. Any other order or direction which may be deemed fit and properly this Hon'ble Court may also be passed in favour of the petitioner including a direction to treat petitioners at par with the petitioners in WP (C) No. 692 of 2025 and allow access to appropriate portal to enable petitioners to obtain revenue extracts. Further, respondent No.2 be directed to take the process of enquiry ordered by virtue of impugned order to its logical end within some specified time, for the same would be in consonance with law and justice."*

(ii) **WP(C) No. 692/2025**

In the instant petition, the petitioners have prayed for the following reliefs:-

- a. By issuance of writ, order or direction one in the nature of certiorari, the Govt. Order bearing No. 03-FC (Rev) of 2024 dated 24.04.2024 issued by respondent No. 2 be quashed.*
- b. By issuance of writ, order or direction one in the nature of mandamus, the respondents be commanded to issue the revenue extracts in respect of Shamilat Deh land (Sec. 5) in favour of petitioners to the extent of land falling under Survey No. 742, 743 & 747 situated at Khimber Srinagar Kashmir, which is recorded in the revenue records in their possession, occupation and ownership strictly in accordance with orders passed by the Divisional Commissioner Kashmir in the matter.*
- c. Any other order or direction which may be deemed fit and proper by this Hon'ble Court may also be passed in favour of the petitioner including a direction to allow access to appropriate portal to enable petitioners to obtain revenue extracts."*

FACTS:-

3. The centre of controversy in the petitions (supra) is order No. 03-FC (Rev.) of 2024 dated 24.04.2024 (*hereinafter called as "the impugned order"*) issued by the Financial Commissioner (Revenue), Kashmir-respondent 2 herein, whereby while taking *suo moto* cognizance of the matter concerning setting aside of Fard-i-Partial dated 24.04.2024 by the Divisional Commissioner, Kashmir-respondent 3 herein, the respondent 2 herein has kept the actions taken pursuant to the said order and decision of the Divisional Commissioner, Kashmir as recorded in minutes of meeting issued on 25.09.2023, in abeyance and appointed the Deputy

Commissioner, Srinagar-respondent 4 as an Enquiry Officer, directing that no revenue extracts for any purpose shall be issued concerning '**Shamilat land**' in village Khimber, while further directing the Deputy Commissioner-Srinagar-respondent 4 herein to conduct a detailed inquiry regarding entitlement of Rule 5 Shamilat Land to the estate holders of the estate and to take note of the observations made by the then Assistant Commissioner, Revenue (ACR), Srinagar in Fard-i-Partal dated 06.05.2015 about the authenticity of Mutation No. 39 of the Estate Khimber, requiring the Deputy Commissioner, Srinagar-respondent 4 also to inquire into the genuineness of Mutation No. 39 of Estate Khimber, as also address certain observations made by the ACR in Fard-i-Partal dated 06.05.2015.

4. The petitioners have challenged the impugned order on the premise that the said order of refusal to issue revenue extracts in their favour qua Rule 5 Shamilat Land having vested unto them on pro-rata basis vis-à-vis proprietary land in Estate Khimber, is legally invalid and essentially depriving them of their right to use and enjoy the said Shamilat Land including their right to sell the said land.

5. *Response* has been filed by the respondents to the petition bearing WP(C) No. 692/2025 (supra), however, the said reply stands adopted in opposition to WP(C) No. 1238/2025 as well, and the petitions are being opposed, *inter-alia*, on the premise that the observations made in the Fard-i-Partal dated 06.05.2015 by the ACR form a foundation for initiation of the corrective action in terms of the order under challenge, while stating further that the Deputy Commissioner, Srinagar-respondent 4 herein has been lawfully empowered to undertake a comprehensive

inquiry into the authenticity of revenue entries, though admitting in the reply that the inquiry stands conducted and report thereof stands drawn by the Deputy Commissioner, Srinagar-respondent 4, which is presently under scrutiny and that in a connected petition bearing WP(C) No. 2527/2023, the petitioners therein have prayed for effecting pro rata distribution of Rule 5 Shamilat Land of the village on the principle of “*Bai Chara*” and, as such, pending such exercise, no further action is warranted qua the claim of the petitioners. It is further stated in the reply that 165 Kanals of Rule 5 Shamilat Land has been taken over by the Department of Sheep Husbandry in the Estate Khimber, as a result of which, the quantum of Shamilat Land in the Estate Khimber has got reduced, directly impacting the overall entitlement of each co-sharer in the Estate Khimber, which has to be factored while distributing the said land. It is also stated in the reply that the *Bai Chara* proceedings qua the said Shamilat land remained incomplete and multiple applications have been received from the aggrieved zamindars/villagers concerning their legitimate entitlements. It is lastly stated in the reply that since the Financial Commissioner (Revenue)-respondent 2 is the highest Revenue Officer in hierarchy, therefore, the order under challenge has been rightly issued in exercise of powers vested with the Financial Commissioner (Revenue)-respondent 2 herein.

Heard learned counsel for the parties and perused the record.

6. The learned counsel for the petitioners while making his submissions in line and tune with the case set up in the petitions, invited the attention of this Court to the inquiry report submitted by the Deputy Commissioner, Srinagar-respondent 4 herein conducted pursuant to the

impugned order and would contend that the said report makes it clear that the very premises on the assumed existence of which impugned order came to be issued, did not exist and have been found to be insignificant by the Deputy Commissioner, Srinagar-respondent 4 herein, thus, leaving no scope to indefinitely continue restriction on issuance of revenue extracts for sale and purchase purposes qua the land in question.

Learned counsel for the petitioners would further submit that the plea of the respondents that no “*Bai Chara*” has taken place qua the partition and distribution of Rule 5 Shamilat Land in the Estate Khimber is factually incorrect, as the respondents in the response filed to the **WP(C) No. 2527/2023** have specifically and unequivocally taken a firm stand that “after issuance of the minutes of meeting, the villagers of Khimber have taken over the possession of land in survey numbers 742, 743 and 747 of estate Khimber on *Bhai Chara*/mutual understanding and without any disturbance and that Khimber will be one of very few villages of whole UT of Jammu and Kashmir where Shamilat Land shall be distributed as per pro rata basis and records shall be updated accordingly”.

According to the learned counsel for the petitioners, since it is admitted by the respondents that the distribution of Rule 5 Shamilat Land in the Estate Khimber has already taken place, therefore, the respondents cannot be heard to say that the distribution has not taken place in accordance with mutual understanding or *Bai Chara*.

It is further contended by the learned counsel for the petitioners that the revenue extracts have had been already issued in favour of certain land holders qua Rule 5 Shamilat Land in the village Khimber, who have executed sale deeds thereof, therefore, the respondents cannot refuse to

issue revenue extracts qua the said land in favour of the petitioners within their entitlement even after factoring and deducting part of the land having been taken by the Department of Sheep Husbandry.

7. On the other hand, the learned counsel for the respondents in response to the aforesaid submissions of learned counsel for the petitioners, would make his submissions in line and tune with the aforesaid reply filed to the petition.

8. Having regard to the respective pleadings of the parties, in as much as, the rival submissions of learned counsels appearing for the parties, as also the record available on the file in general and the inquiry report of the Deputy Commissioner, Srinagar-respondent 4 herein in particular, the issue/controversy involved in the petitions have been substantially narrowed down after submission of the aforesaid inquiry report of the Deputy Commissioner, Srinagar-respondent 4 herein, a perusal would tend to show that a categorical finding has been recorded therein the report that Mutation No. 39, which determined Rule 5 Shamilat Land of village Khimber is genuine, while making it clear that the observations made by the ACR, Srinagar qua Fard-i-Partial dated 06.05.2015 having highlighted certain discrepancies, were unwarranted and insignificant and that the Divisional Commissioner, Kashmir-respondent 3 herein has rightly addressed the issue of encroachment of Rule 5 Shamilat Land by the Sheep Husbandry Department.

A deeper and closer examination of the said enquiry report reveals that the finding recorded by the Deputy Commissioner, Srinagar-respondent 4 herein are not only well reasoned, but seemingly are in line

with the observations made by the Committee of Officers appointed earlier by Divisional Commissioner, Kashmir-respondent 3 herein.

It would be significant to mention here that the relevant conclusion drawn by the Divisional Commissioner, Kashmir-respondent 3 herein in the matter were made after having taken cognizance of the report of the Committee constituted by him, which Committee had clearly observed that part of Rule 5 Shamilat Land has been wrongly occupied by the Sheep Husbandry Department and Tribal Department, upon which, certain assets have been created by the said departments, same shall continue to remain with the said departments and that the villagers/land holders have willingly parted way the said land to the Government and that in lieu of said land, the cases of the villagers/land holders for their share in rest of the land shall be processed separately as per law on receipt of separate requests from the villagers and that the land holders/villagers shall avail all the rights over the Shamilat Land as guaranteed under the relevant Revenue Laws/Rules including Rule 05 of Shamilat Rules and that considering the findings of the report by the Committee, the Order issued by the then ACR Srinagar vide Fard-e-Partial dated 06.05.2015 for Survey Nos. 742, 743 and 747 is set aside and that going forward, there will not be any restrictions on purchase and sale of Section 5 Shamilat land in aforesaid survey numbers in the village Khimber and what emanates from above is that thereafter Rule 5 Shamilat Land falling in aforesaid survey numbers stand formally partitioned amongst land holders on pro-rata basis according to their respective entitlements and appropriate entries as well made in the revenue records by virtue of Fard-i-Partial carried on 29.09.2023, thus, manifestly suggesting that the land in question has been

partitioned to the satisfaction of all stakeholders and that there is complete *Bai Chara* in the village. Insofar the plea of the respondents that no formal partition of Rule 5 Shamilat Land in the village in question has taken place is concerned, though the same is belied by the stand taken by the respondents in opposition to WP(C) No. 2527/2023, yet in any case, it cannot be a ground for denying issuance of a revenue extract to the landowners to sell their share in the joint/un-partitioned Shamilat holding, as the law on the subject is well settled that even in absence of a formal partition, a co-sharer in a joint property can sell his share and that by such sale, the purchaser steps in the shoes of the seller and any such sale is always subject to final partition that may take place in future at the instance of any co-sharer. It is on this premise that Rule 5 Shamilat land is also sold and purchased throughout the Jammu and Kashmir.

9. It is appropriate and significant to mention here that the law qua the rights of land holders in the Rule 5 Shamilat Land is well settled and is no more *res-integra*. This Court in case titled, “*State of J&K Vs. Hamida Begum and ors.*”, reported as *AIR 1979 J&K 48*” has authoritatively held that rights and incidents of Shamilat Land are same as that of the proprietary land. Similarly, in case titled, “*Union of India Th. Defence Estates Officer, Srinagar Vs. Freena Boga*”, reported as *SLJ 2004 (II) 776*”, this Court has held that rights in Rule 5 Shamilat Land are identical to those of proprietary land. A similar proposition has been reiterated by this Court in case titled, “*Kuldeep Raj and others versus State of J&K and others*”, reported in *2022 (1) SLJ 166*”, wherein a reference has been made to Boon No. 4 issued by the Maharaja of the erstwhile State of Jammu and Kashmir, whereby and whereunder Khalsa/State land

commonly known as Khalsa Sarkar, was ordered to be bestowed upon village community and was ordered to be shown as Shamilat-Deh and the villagers concerned were awarded jointly the same rights therein, which they possess in their individual holdings and that the landholders in a particular village would be entitled to have a share in the said declared Shamilat-Deh land pro rata to their holdings, meaning thereby that a villager shall have proprietary rights in the Shamilat land in proportion of the size of his holding in a particular estate and such right got vested in the landholders at the time of issuance of said Boon No. 4, which right cannot be taken away without the authority of law and unless the persons are duly compensated in accordance with law.

10. It is also pertinent to mention here that record tends to show that though the Deputy Commissioner-Srinagar-respondent 4 herein has submitted the aforesaid inquiry report more than a year before, yet the Financial Commissioner (Revenue)-respondent 2 herein has failed to take further action on the said report, therefore, leading to the only inference that the findings recorded by the Deputy Commissioner, Srinagar-respondent 4 herein in the said inquiry report are conclusive and reasonable without there being any contrary view against it.

11. In view of the aforesaid position obtaining in the matter, it cannot, but be said, that the continuation of restrictions on the issuance of revenue extracts in favour of the petitioners qua Rule 5 Shamilat Land in question for an indefinite period is unfair, arbitrary and unreasonable, more so when the very basis on the assumed existence of which, such restrictions came to be imposed by the Financial Commissioner (Revenue)-respondent 2 herein have been found to be non-existent after a thorough

enquiry by the Deputy Commissioner, Srinagar-respondent 4 herein, in that, said continued restriction puts an unwarranted clog on right of the petitioners herein to use and enjoy the Rule 5 Shamilat Land to the extent of their respective shares, thus, constituting an invasion on the constitutional right to property enshrined in the Constitution, which right has been held by the Courts to be akin to a fundamental right.

12. Viewed, thus, for what has been observed, considered and analyzed herein-above, the instant petitions *succeed*, therefore, the impugned order No. 03-FC(Rev) of 2024 Dated 24.04.2024 issued by respondent No. 2 to the extent it bars/restrains issuance of revenue extracts (Fards) so as to prevent sale and purchase of Rule 5 Shamilat Land is quashed, as a consequence whereof, the respondents, in general, and the Tehsildar concerned, in particular, is directed to issue revenue extracts in favour of estate holders of village Khimber in respect of Rule 5 Shamilat Land falling in Khasra No. 742, 743 and 747, provided that concerned applicant estate holder is in possession of the land, in respect of which, the application for issuance of revenue extract/Fard is being sought and that the quantum of such land does not exceed the total entitlement of the said applicants/estate holders in Rule 5 Shamilat Land in the village on pro-rata basis. Further the revenue extracts/Fards be issued within a time frame prescribed by rules from the date an application is made in this regard regardless of the fact as to whether or not a formal partition qua the said land has taken place.

Further, while determining the entitlement of each landholder in Rule 5 Shamilat Land in the estate, the part of the said land that is stated to have been occupied by Department of Sheep Husbandry and Tribal

Department measuring 165 Kanals shall be deducted from the total divisible Shamilat land without prejudice to the right of such landholders to claim further entitlement in Rule 5 Shamilat land, as, when and if land in lieu of the said occupied Shamilat Land is made available.

13. *Disposed of* alongwith connected applications, if any.

14. A copy of this judgment and order shall be made placed on the record of each petition.

CCP(S) No. 201 of 2025

15. In view of the aforesaid decision rendered in the petitions (supra), the instant contempt proceedings are *closed* for the time being, leaving it open to the petitioners herein to seek initiation of appropriate action in the event of availability of cause and if so advised.

**(JAVED IQBAL WANI)
JUDGE**

**JAMMU
31.10.2025
Ram Krishan**

Whether the judgment is speaking: Yes
Whether the judgment is reportable: Yes