

IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 1638/2025

Mushtaq Ahmad Bhat
S/O Lt. Abdul Khaliq Bhat
R/O Shilvat Bandipora

...Petitioner(s)

Through: Mr. Aswad R. Attar, Adv.

Vs.

1. Union of India through Secretary to Government of India, Ministry of Road Transport & Highways Transport Bhawan, 1 Parliament Street New Delhi-110001
2. Deputy Commissioner Bandipora (Competent Authority for Acquisition of Land)
3. Chief Engineer Public Works (R&B) Baramulla, Kashmir.

...Respondent(s)

Through: Mr. T.M.Shamsi, DSGI, for 1
Mr. Ilyas Laway, GA, for 2 and 3

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

ORDER
15.07.2025

Oral:

01. The petitioner, in the instant petition, is calling in question the Notice dated 26th June, 2025, by virtue of which, he has been called upon to remove/dismantle the Single Storey Shop Line completely within a period of seven days from the date of issuance of the said notice. Petitioner has also been informed through the medium of aforesaid notice that in case he fails to comply with directions, proceedings to recover the compensation as per re-assessment by R&B (PWD) shall be initiated against him.

02. From a bare perusal of the Notice dated 26th June, 2025, which is impugned in the instant petition, it is apparently clear that the concerned Deputy Commissioner, Bandipora, who is the competent Authority for the Land Acquisition, has already passed an award in respect of the land falling within the alignment of Semi Road Phase II in Tehsil Sumbal along with assets attached to it under Section 3G of the National Highway Act, 1956 [for short ‘ NH Act’], vide Award No. 01/2023 issued vide Communication No. DCB/LA/2022-2023/838-44 dated 21st October, 2023, and Award No. 01/2024, issued vide Office No. DCB/LA/2023-2024/1102-12 dated 23rd January, 2024. It is also mentioned in the impugned notice that the Land Acquiring Agency has placed the requisite amount of compensation at the disposal of the concerned Deputy Commissioner, who has already disbursed the same among the land owners including the petitioner. The notice further reveals that the petitioner has already received the compensation against the structure amounting to Rs. 2046930/- along with 100% consolation. It is further mentioned in the notice that since the petitioner has only removed/dismantled part of the structure and the remaining part of the structure poses a potential safety risk to the said project, therefore, he has been called upon to remove/dismantle the said structure completely within a period of seven days from the date of issuance of the said notice.

03. Although the petitioner was under an obligation to remove/dismantle the said structure completely within a period of seven days from the date of issuance of the said notice, but his

specific stand is that he has received the said notice on 30th June, 2025, , which is impugned in the instant petition,

04. Be that as it may, even if the assertion made by the petitioner is admitted to be true, still the petitioner was under an obligation to remove/dismantle the said structure within a period of seven days, which period, even it has commenced from 30th June, 2025, is over by now. Thus, the instant petition to that extent is rendered infructuous.

05. At this stage, learned counsel for the petitioner submits that petitioner has filed a detailed representation before the Deputy Commissioner, Bandipora, way back on 15th March, 2024 for re-verification of structure coming in the alignment of Semi Ring Road Phase-II followed by another representation dated 7th May, 2025, which till date have not been accorded due consideration and the respondents, instead of according consideration on the aforesaid representations of the petitioner, have proceeded with the demolition notice.

06. Mr. Ilyas Laway, learned GA, submits that the petitioner has not availed the remedy available under the NH Act, by approaching the concerned Arbitrator with regard to the grievance projected in the instant petition in terms of Section 3G (5) of the NH, Act. Mr. Laway, further submits that the issue, which has been raised in the instant petition, falls within the realm of disputed questions of fact and same cannot be gone into while exercising the writ jurisdiction. On this count alone, the writ petition is not maintainable and is liable to be dismissed.

07. Heard learned counsel for the petitioner as well as learned counsel for the respondents and perused the material on record.

08. Since the specific case of the petitioner is that he has already filed a detailed representation for re-verification of the structure which has come under the alignment of Semi Road Phase II in Tehsil Sumbal before the competent Authority, but till date the same has not been accorded due consideration. The petitioner submits that the compensation, so received by him, is also under pretext. This aspect of the matter is also substantiated from a bare perusal of the communication dated 30th March, 2024 issued by the Superintending Engineer, PWD (R&B), Bandipora, whereby the petitioner has been directed to approach the Deputy Development Commissioner, Bandipora. In pursuance to the aforesaid direction, the petitioner has also filed a detailed representation before the competent Authority and the competent Authority instead of according due consideration on the said representation, has proceeded with the demolition notice dated 26th June, 2025, impugned in the instant petition.

09. Thus, this Court is of the *prima facie* view that the respondent-Deputy Commissioner, Bandipora, was under obligation to accord consideration on the representation filed by the petitioner in furtherance to the communication issued by the concerned Superintending Engineer, but he has failed to do so.

10. From a bare perusal of the notice impugned in the instant petition, it is apparently clear that the same was issued on 26th June, 2025, and the petitioner, who was called upon to remove/dismantle the said structure within a period of seven days from the date of issuance of

the said notice and to the contrary, the assertion of the petitioner that he has received the aforesaid notice on 30th June, 2025, even if it is admitted to be true, the action was required to be taken within a period of seven days, which period is over by now and, thus, with the efflux of time the challenge thrown by the petitioner to the aforesaid notice has already lost its validity. In that view of the matter, this Court deems it proper to direct the concerned Deputy Commissioner to take a decision on the representation alleged to have been filed by the petitioner within a period two weeks from today strictly under rules and in accordance with law by providing an opportunity of being heard to the petitioner. Till the decision is taken by the concerned Deputy Commissioner, Bandipora, the impugned notice dated 26th June, 2025, shall not be acted upon in case the same is yet to be acted upon.

11. However, it is made clear that this interim protection is till the decision is taken by the Deputy Commissioner, Bandipora and the continuance of the same shall be subject to further orders of the Deputy Commissioner.

12. The writ petition in the aforesaid manner is **disposed of** along with connected CM(s). However, the decision, which is likely to be taken by the respondents, be conveyed to the petitioner through registered post.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
15.07.2025
"Shamim Dar"