

Serial no. 3
Regular cause list

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

LPA 171/2025 in [WP(C) 278/2023]
CM (4648/2025) CM (4915/2025)

Date of Pronouncement: 03.12.2025
Uploaded on: 04.12.2025

ABDUL AZIZ RESHI AND ORS

...Appellant/Petitioner(s)

Through: Mr. Sheikh Younis, Advocate.

Vs.

UNION TERRITORY OF J AND K AND ORS

...Respondent(s)

Through: Mr. Jehangir Ahmad Dar, GA with
Mr. M. Younis Hafiz, Assisting Counsel

CORAM:

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

ORDER (ORAL)

03.12.2025

1. This intra-court appeal by the appellants is directed against an order and judgment dated 8th July, 2025, passed by the learned Single Judge [“the Writ Court”] in WP(C) No. 278/2023, whereby the Writ Court has dismissed the writ petition of the appellants having found the same devoid of any merit.

2. Before we advert to the grounds of challenge, a quick look at the reliefs claimed by the appellants in their writ petition would be necessary.

3. The appellants have prayed for following reliefs:

A. Mandamus directing official respondents to not construct a link road on the tract of land of irrigation canals falling under Survey No. 866, 915 and 936 of Village Chewa-Uller Tral which are recorded in revenue records.

B. Issue a writ of mandamus, directing official respondents to start removing encroachments made on irrigation canals and daraabpashi under Survey No. 866, 915 and 936 of village Chewa-

Uller Tral without any further delay so that it can accommodate more water which in turn will help in agricultural activities and also avoiding destruction caused by floods.

C. Issue a writ of mandamus directing official respondents to preserve the tract of land falling under No. 866, 915 and 936 of Village Chewa-Uller Tral which is recorded as irrigation canal and Daraabpashi as per revenue records.

4. These reliefs have been claimed by the appellants by setting up a case of alleged encroachment by the official respondents on an irrigation canal falling under Survey No. 915 for the purposes of construction of a public road. The intended action of the Department of Rural Development to construct road on the aforesaid so called canal has been challenged on the ground that an irrigation canal maintained by the Department of Irrigation could not be put to use other than for which it is meant i.e. for agricultural purpose. It is the case set up by the appellants in the writ petition that by constructing a road, the official respondents intend to encroach upon the irrigation canal thereby affecting the rights of the farmers including the petitioners to irrigate their agricultural land.

5. The writ petition was resisted by both the Department of Irrigation as well as the Department of Rural Development.

6. In the reply filed by the Department of Irrigation, it is a clear stand taken that the Department of Irrigation has not initiated or executed or even given any clearance for construction of any road over the water course maintained by it. The Department of Irrigation has asserted that the Department is fully aware of its duty to protect the water bodies and wealth of irrigation infrastructure in the interest of public welfare. So far as the reply of the Additional Deputy Commissioner, Tral, is concerned it is the stand taken by it that though a road is proposed to be constructed by the Department of Rural Development on Khasra No. 915 to connect the existing road between Khasra No. 678 and Khasra No. 931, yet, every care has been taken to ensure that the water channel is not interfered with and the irrigation needs of the farmers are not affected in any manner.

7. The Additional Deputy Commissioner claims to have visited the spot to take stock of the ground situation. He has submitted that the villagers were found very exuberant and excited about the construction of the road that would connect them with the rest of the villages and would cater to the needs of transportation of agricultural produce from their village to outside destinations. He has submitted that the road has been constructed on a Gair-Mumkin Rasta and not on any irrigation canal/water channel maintained by the Department of Irrigation.

8. Having taken note of the rival stand of the parties, the learned Single Judge concluded that the appellant had no cause of action to file the petition and that construction of road without interfering with the irrigation needs of the villagers was in larger public interest. It is in this background, the Writ Court, having taken note of the fact that the road stood already constructed, dismissed the petition being devoid of merit and has having been rendered infructuous.

9. The impugned judgment passed by the Writ Court is called in question by the appellants primarily on the ground that the Writ Court has failed to appreciate the issue in true perspective and has permitted the authorities to construct the road even by encroaching upon the irrigation canal maintained by the Department of Irrigation.

10. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment of the Writ Court to the extent it finds the appellants having no cause of action to maintain the petition is perfectly legal and does not call for any interference. The only grievance that was projected by the appellants before the Writ Court was that they apprehended the encroachment of irrigation canal maintained by the Department of Irrigation for the purposes of constructing the road. The reply of Additional Deputy Commissioner, Tral, clearly stated that there was no attempt by either of them to construct a road by blocking any irrigation canal maintained by the Irrigation Department.

11. As a matter of fact, during the pendency of this petition, this Court vide order dated 13th August, 2025, directed the official respondents to file

a status report with regard to the true and actual position prevailing at the site.

12. In compliance with the aforesaid order, the Additional Deputy Commissioner, Tral, has filed a status report giving the current status of the site, the subject matter of litigation in the writ petition. It is given in the status report that the work on the pathway through Survey No. 678 and 930 stood already completed by the Rural Development Department prior to the filing of the petition. As a matter of fact, the learned counsel for the appellants has also very fairly submitted that the appellants have no dispute with regard to the construction of pathway through the Survey No. 678 and 930. The status report further discloses that development work on the portion of Survey No. 915 was initiated by the Department of Rural Development but the same could not be concluded due to the order of status-quo passed in the writ petition.

13. It has further been submitted that notwithstanding the vacation of the order of status-quo, the Department of Rural Development has of its own not re-commenced the development work on the portion of Survey No. 915.

14. From the aforesaid report it clearly transpires that the Department of Rural Development has not so far resumed the construction work of the road proposed at Survey No. 915.

15. In view of the aforesaid report, the apprehension of the appellants that while constructing the road at Survey No. 915, the Department of Rural Development is likely to encroach upon the irrigation canal maintained by the Irrigation Department is premature and can be taken care of by providing that notwithstanding the dismissal of the writ petition of the appellants in terms of the judgment impugned, the Department of Rural Development, in case it decides to construct the road at Survey No. 915 in future, shall ensure that no irrigation canal maintained by the Department of Irrigation is encroached upon or used for such construction.

16. With the aforesaid observations, this appeal is disposed of without interfering with the rest of the judgment passed by the Writ Court.

17. We also take this opportunity to direct the Additional Deputy Commissioner, Tral, and the authorities of the Irrigation Department to ensure immediate steps to remove all the encroachments on the either side of the irrigation canal, if any, maintained by the Irrigation Department.

18. **Disposed of.**

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

03.12.2025

"Shahid Manzoor"

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