

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

CM(M) No. 301/2024

Mst. Mahmooda and Ors.

...Appellant/Petitioner(s)

Through: Mr. M. Y. Bhat, Sr. Advocate with
Mr. Farooq Ahmad Khan & Mr. Sajid Ahmad Bhat,
Advocates

Vs.

Syed Ghulam Jeelani Qadri

...Respondent(s)

Through: Mr. Haris Khan, Advocate vice
Mr. Sajad Ahmad Mir, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER
02.12.2025

1. This petition, filed under Article 227 of the Constitution of India, is directed against the order dated 29.06.2024 passed by the Court of the 2nd Additional District Judge, Srinagar, whereby the appeal was allowed and the order passed by the Court of the 1st Additional Munsiff, Srinagar, was set aside, with a further stipulation that till the final disposal of the main suit, the parties shall maintain status quo vis-à-vis the subject matter of the suit, i.e., the pathway measuring 91 feet and 6 inches in length and 12 feet in width.
2. Briefly stated, the facts leading to the filing of the present petition are that the respondent herein/plaintiff instituted a suit for injunction against the petitioners herein/defendants, asserting that he had purchased land measuring 18 marlas under Khasra No. 285, Khewat No. 59-min, situated at Kursu Padshahi Bagh, within municipal limits, along with a house and a dedicated private lane measuring 91 feet in length and 12 feet in width. The said lane formed part of the sale deed

dated 08.07.1993. It is the case of the plaintiff that the lane is fenced, an iron gate has been installed for ingress and egress, and that he has constructed drainage, water supply and a soakage pit after obtaining the requisite permissions from the competent authorities.

3. It is averred that the erstwhile owner possessed land and a house adjacent to the plaintiff's land and had a separate access from the main road. The said property was sold to Mst. Mehmooda (petitioner No. 1 herein) in 2003, who thereafter, without authority, converted the residential house into a commercial establishment. According to the plaintiff, the defendants have been attempting to interfere with his peaceful possession, particularly with the exclusive private lane that forms part of his sale deed, causing damage to the gate and creating nuisance and other disturbances.
4. It is further averred that the respondent developed a desire to usurp the common passage exclusively after his family friend, namely Athar Amir Ali, was posted as Commissioner, Srinagar Municipal Corporation (SMC). It is alleged that the Commissioner, SMC, singled out the Nausheen Guest House from among nearly one hundred hotels/guest houses, cafeterias, restaurants, shops, parlours and tuition centres operating in the vicinity similarly situated to the petitioner No.1's guest house/café, and issued a three-day show-cause notice dated 16.10.2023 to the defendants. However, without waiting for expiry of the notice period, the Commissioner passed an order the very next day, i.e., on 17.10.2023. The said order does not disclose the provision of law under which the Commissioner assumed jurisdiction to direct closure of the "unauthorizedly made opening" allegedly made towards the private property of Dr. Syed Jeelan Qadri (the

respondent herein). Pursuant to the said order dated 17.10.2023, the door of the petitioners' guest house through which the common passage had been accessed by the petitioners for decades was closed without affording the petitioners any opportunity of being heard.

5. It is also averred that immediately after altering the position on the spot by welding/closing the door leading from the common passage to the petitioners' premises and by installing a gate at the entry point of the said passage, allegedly with the active connivance of certain police and municipal officials, the respondent filed a suit on 18.10.2023 before the Court of 1st Additional Munsiff, Srinagar. In the said suit, the respondent is stated to have suppressed material facts, including the fact that only a day prior to filing of the suit, the Commissioner, SMC, had passed an order dated 17.10.2023 in respect of the very subject matter of the suit, and had directed the sister of petitioner No.1 to immediately close the alleged unauthorized opening towards the respondent's private property. This clearly establishes that the said door is an old, decades-long access point of the petitioners' guest house and not any unauthorized recent opening. The respondent also failed to disclose that the said door had already been closed by the SMC and the police on 17.10.2023 itself. The Trial Court, by order dated 18.10.2023, restrained the defendants from causing any interference with the suit property or blocking the plaintiff's private lane/pathway except in accordance with due process of law until the next date of hearing. The said order was made subject to objections from the non-applicants/petitioners herein, who were granted liberty to approach the Court for modification, variation, or alteration of the order before the next date of hearing.

6. It is further averred that, in response to the order dated 18.10.2023, the non-applicants/petitioners herein filed their written statement and counter-claim on 22.11.2023. After considering the factual position supported by documentary evidence, as well as the order dated 20.10.2023 passed by this Court, the Trial Court vide order dated 10.02.2024 vacated the interim order dated 18.10.2023, by which the defendants/petitioners herein had been temporarily restrained from causing any interference with the suit property or from blocking the plaintiff's private lane/pathway except in accordance with law.
7. The respondent herein preferred an appeal against the order dated 10.02.2024 passed by the learned 1st Additional Munsiff, Srinagar, which came to be assigned to the Court of the learned 2nd Additional District Judge, Srinagar. The appellate court, vide order dated 29.06.2024, allowed the appeal and set aside the order of the learned Trial Court. The appellate court further directed that, until final disposal of the main suit, the parties shall maintain *status quo* with respect to the subject matter of the suit, namely, the pathway measuring 91 feet 6 inches in length and 12 feet in width.
8. The Petitioner No. 1 had earlier also filed WP(C) No. 2744/2023, challenging the order dated 17.10.2023 passed by the Commissioner, Srinagar Municipal Corporation, directing her:-
- (i) to immediately close the unauthorized opening made towards the private property of Dr. Syed Ghulam Jeelani Qadri;
 - (ii) to refrain from creating any nuisance by way of creating noise, trespass or authorized entry and occupation into the adjacent private properties including that of Shri Dr Syed Ghulam Jeelani Qadri and other neighbours;
 - (iii) to refrain from creating nuisance and public annoyance by parking vehicles on the main road by the customers and employees coming to your premises;

- (iv) to ensure that you, your family members and individuals employed by you or working in your premises shall refrain from indulging into any kind of nuisance by way of harassment or bullying of the residents in the adjacent premises; and.
- (v) Further separate proceedings have been initiated regarding opening of the commercial establishment without the appropriate permission and license of SMCE. A separate notice with respect to that also stands issued to you.

9. The Writ Court, vide order dated 20.10.2023, disposed of the petitioner with a direction that if any action were to be initiated, the Commissioner, SMC, or any competent authority should do so only after following due process of law and after affording an opportunity of hearing to the petitioner. The Court also took note of the petitioner's assurance that she would not create nuisance, trespass or allow parking of vehicles on the main road by customers or employees.
10. A contempt petition was thereafter filed alleging non-compliance of the order dated 20.10.2023. The respondents filed a compliance report stating that directions similar to those contained in the order dated 17.10.2023 had been reiterated, and that in case of non-compliance, action would follow under the Municipal Corporation Act, 2000 and the Unified Building Bye-Laws, 2021. It was further stated that the order dated 17.10.2023 had been rescinded ab initio. In view of such compliance, the contempt petition was closed.
11. Learned counsel for the petitioners submits that because of the status quo order passed in the suit proceedings, the petitioners are unable to access their business establishment, as the gate which had been sealed has not been reopened. It is contended that the order dated 17.10.2023 of the Commissioner, SMC, had been passed on the alleged ground of

violation of Municipal Bye-Laws, which basis no longer survives after rescission of the said order. Therefore, once the SMC has withdrawn the earlier order, it is obliged to remove the seal from the gate. It is further argued that the order of status quo pertains to the rights of the parties concerning the subject matter of the civil suit and cannot stand in the way of the Municipal Corporation implementing its own order rescinding the earlier direction dated 17.10.2023.

12. Having considered the submissions, it is clarified that the status quo order passed by the Trial Court relates to the subject matter of the suit and the inter se rights of the parties. The said status quo order shall not impede or operate as an embargo upon the Srinagar Municipal Corporation in implementing its decision whereby the order dated 17.10.2023 has been rescinded. **Disposed of** accordingly.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR

02.12.2025

Manzoor