

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

LPA 232/2024
In [WP(C) 1702/2023]

Date of Pronouncement: 10.11.2025
Uploaded On: 11.11.2025

Ghulam Hassan Wagay
S/O: Ghulam Qadir Wagay
R/O: Chowdrigund Tehsil & District
Shopian

...Appellant

Through: Mr. Mir Manzoor Ahmad, Advocate

Vs.

1. Union Territory of J&K through
Financial Commissioner Revenue,
Srinagar/Jammu.

2. Divisional Commissioner Kashmir,
Srinagar.

3. District Magistrate, Shopian.

4. Tehsildar Shopian, District Shopian

5. Ramesh Kumar Koul
S/O: Dina Nath Koul

7. Smt. Kishni Kumari
D/O: Dina Nath Koul

8. Smt Kumari
W/O: Late Vijay Kuamr Koul
R/O: respondents No. 5 to 8
Chowdrigund Tehsil & District Shopian
A/P H.No. 40 Bagwati Nagar Canal
Road, Jammu.

...Respondents

Through: Mr. Mohd Younis Hafiz, Assisting Counsel vice
Mr. Mohsin Qadri, Sr. AAG for R- 1 to 4.
Mr. Shabir Ahmad Malik, Advocate for R-5 to 8.

CORAM:

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

JUDGMENT

1. This intra-court appeal by the appellant-Ghulam Hassan Wagay arises from an order and judgment dated 12th August, 2024, passed by the learned Single Judge of this Court [“the writ Court”] in WP(C) No. 1702/2023 titled **“Ghulam Hassan Wagay Vs. Union Territory of J&K and Others”**, whereby the writ petition filed by the appellant has been dismissed with liberty to the appellant to avail the appropriate remedy as available under the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 [“the Act of 1997”].

2. Before we take up the grounds of challenge urged by the learned counsel for the appellant for consideration, we deem it appropriate to set out few facts as are germane to the disposal of this appeal.

3. The respondent No. 4-Tehsildar, Shopian, issued a notice bearing No. Ts/oQ/misc/23-24/05 dated 24th June, 2023 calling upon the appellant herein to remove alleged encroachment on the migrant immovable property belonging to the private respondents, providing further that the failure to do so shall entail sealing of the property.

4. Feeling aggrieved, the appellant filed WP(C) No. 1702/2023 seeking following reliefs:-

(i) *Certiorari, thereby quashing the impugned notice No. Ts/oQ/misc/23-24/05 dated 24.06.2023, issued by the Tehsildar, Shopian.*

(ii) *Mandamus, commanding the respondents to forebear and restrain from evicting the petitioner from the property purchased by him.*

(iii) *Mandamus, commanding the respondent No. 4 Tehsildar Shopian to issue revenue extracts of plot of land measuring Five Kanals & One Marla falling under Kashtra No. 126, 243/151, 393/241/151, 277/186 & 289/186, and one pacca house situated at Chowdrigund Tehsil and District Shopian in favour of petitioner for registration of sale deed.*

(iv) *Mandamus, commanding the respondent No. 2 Divisional Commissioner, Kashmir to issue the order for deemed permission for alienation of property in favour of the petitioner under the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997.*

5. The short grievance that was projected by the appellant before the writ Court was that he had been put in possession by the private respondents of land measuring 5 Kanals and 1 Marla falling under Khasra Nos. 126, 243/151, 393/241/151, 277/186 & 289/186, along with one pacca house situated at Chowdrigund, Tehsil and District Shopian [“the subject property”].

6. The appellant was handed over the possession of the subject property by the private respondents after executing a general power of attorney in favour of his brother Mohammad

Razman Wagay and an agreement to sell in his favour after receiving a consideration of Rs. 10.00 lacs.

7. It was contended before the writ Court that, with a view to seeking permission for alienation of subject property, the appellant approached the Divisional Commissioner, Kashmir, but the matter remained pending in the office of the later for one reason or the other. It was submitted by the appellant that before a final decision in the matter could be taken by the Divisional Commissioner, Kashmir, the respondent No. 4- Tehsildar, Shopian, initiated the eviction proceedings at the instance of the private respondents which constrained him to approach this Court through the medium of writ petition bearing WP(C) No. 1702/2023, which has been dismissed by the writ Court in terms of the impugned judgment.

8. Having heard learned counsel for the parties and perused the material on record, we find that the relevant facts giving rise to the instant litigation are not much in dispute. The execution of the agreement to sell and even the power of attorney by the private respondents in favour of the appellant and his brother Mohammad Ramzan Wagay, are not denied. It is also not disputed that on the strength of General Power of Attorney in favour of the brother of appellant Mohammad Ramzan Wagay, a formal application for alienation of subject property has been moved before the Divisional Commissioner, Kashmir, which is pending decision.

9. The writ petition was, however, opposed by the private respondents on the ground that though the private respondents have executed the requisite documents yet the proposed sale was a distress sale, as the private respondents were constrained to sell the land at lower rate due to the then prevailing law and order situation in the valley.

10. We have given out thoughtful consideration to the nature of dispute that has arisen between the appellant and the private respondents and we are of the considered opinion that the same has not been adequately addressed by the writ Court in the judgment impugned. A specific prayer made by the appellant seeking writ of *mandamus* to the Divisional Commissioner, Kashmir, to issue the order of deemed permission to alienate the subject property under the Act of 1997 has not been adverted to and dealt with by the writ Court.

11. Unless the Divisional Commissioner, Kashmir, who is seized of the application of the appellant for seeking permission to alienate the subject property is disposed of in one way or the other, no other proceedings including the proceedings initiated by the respondent No. 4-Tehsildar Shopian, can be permitted to continue.

12. In view of the aforesaid, the appeal is allowed and the judgment impugned is set aside and the appeal is disposed of with a direction to the respondent No. 2-Divisional Commissioner, Kashmir, to consider and take a final decision

on the application of the appellant for permission to alienate the subject property under the provisions of the Act of 1997 after affording an adequate opportunity of hearing to both the sides.

13. Let a decision on the application be taken within a period of three months from the date a copy of this judgment is served by either party upon the Divisional Commissioner, Kashmir. We, however, make it clear that till the Divisional Commissioner, Kashmir, decides the matter finally, the respondent No. 4-Tehsildar, Shopian, or for that matter the District Magistrate, Shopian, shall not proceed in the matter. The further proceedings in the matter shall depend upon the orders that may be passed by the Divisional Commissioner, Kashmir. Needless to say, that any party aggrieved by the decision of the Divisional Commissioner, Kashmir, shall be free to avail appropriate remedies as may be available under law.

14. Disposed of.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

10.11.2025

"Mir Arif"

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