

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

Reserved on: 13.10.2025

Pronounced on: 30.10.2025

Uploaded on: 30.10.2025

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

CJ Court

LPA No.228/2025

Ms. Sabiya Tariq, aged: 58 years
D/o Kh. Ghulam Anma
R/o Nalabal, Nowshehra, Srinagar.

...Petitioner(S)/Appellant(s)

*Through: - Mr. Z. A. Shah, Sr. Advocate, with
Mr. A. Hanan, Advocate.*

Vs.

1. UT of J&K through Chief Secretary, Civil Secretariat, Srinagar.
2. Sher-i-Kashmir National Medical Institute Trust.
3. Director, Health Services, Kashmir, Old Secretariat, Srinagar.

...RESPONDENT(S)

Through: - Mr. Waseem Gul, GA.

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

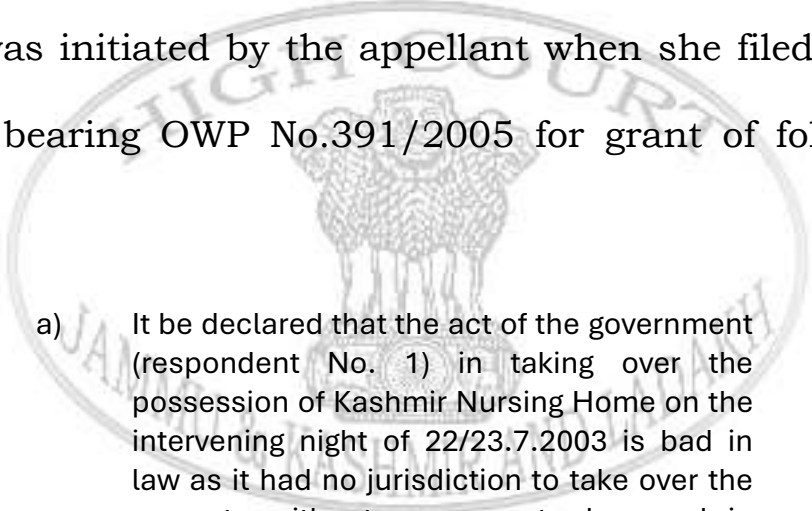
OSWAL 'J'

BRIEF HISTORY OF THE CASE:

1) In essence, this is second round of litigation after the initial writ petitions preferred by the respondent No.2 came to be decided finally by the judgment dated 07.06.2005 rendered by the then Hon'ble the Chief Justice Mr. Justice

S. N. Jha, thereby upholding the judgment rendered by Hon'ble Mr. Justice V. K. Jhanji, as the Division Bench comprising of Hon'ble Mr. Justice V. K. Jhanji and Hon'ble Mr. Justice Syed Bashir-ud-Din had delivered a split verdict in terms of judgment dated 26.05.2004. Hon'ble Mr. Justice V. K. Jhanji dismissed the writ petition(s) preferred by the respondent No.2 whereas Hon'ble Mr. Justice Syed Bashir-ud-Din allowed the writ petition(s) preferred by the respondent No.2.

2) This second round of litigation in respect of same issues was initiated by the appellant when she filed a writ petition bearing OWP No.391/2005 for grant of following reliefs:

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- a) It be declared that the act of the government (respondent No. 1) in taking over the possession of Kashmir Nursing Home on the intervening night of 22/23.7.2003 is bad in law as it had no jurisdiction to take over the property without recourse to law and in which the petitioner had become irrevocable licensee;
 - b) It be declared that taking over of Kashmir Nursing Home in breach of agreement dated 12.5.2003 and or without payment of compensation to the petitioner for the huge amount which she had invested in the Nursing Home was bad in law and violative of the constitutional provisions.
 - c) By an appropriate writ direction or order including a writ in the nature of mandamus respondents be directed to restore possession of the Kashmir Nursing Home to the petitioner and or to compensate the petitioner for the property acquired by the respondents.

- d) By an appropriate writ direction or order including a writ in the nature of prohibition respondents be restrained from creating third party interests in the property.

3) It needs to be noted that the appellant is the cousin of Dr. Ali Mohammad Mattoo, who happened to be the Vice Chairman of the respondent No.2. The above mentioned reliefs were sought by the appellant by pleading in the writ petition that she came to know that the respondent No.2 needed support from the private sector to run and operate Kashmir Nursing Home (for short "the Nursing Home") as such, she approached the Board of Trustees. The Board of Trustees took a decision in favour of the appellant and, accordingly, the appellant deposited Rs.20.00 lacs at the first instance with the respondent No.2. An agreement dated 12.05.2003 came to be executed between the appellant and the respondent No.2. It was claimed by the appellant that pursuant to the above mentioned agreement, the management of the Nursing Home was taken over by her from the Trust. The appellant further claimed to have spent an amount of Rs.34,48,000.00/ for execution of various civil works to renovate and improve superstructure including furniture etc. and further an amount of Rs.99,58,166,00/ for the purpose of procuring equipments. Besides, the appellant also claimed to have procured various drugs and paid an amount of Rs.14.00 lacs to

respondent No.2 for the equipment purchased by her from the Trust, which were installed and available in the Nursing Home at the time of conclusion of the agreement. Out of Rs.30,30,929.00/- as the cost of equipment determined by the respondent No.2, the appellant further claimed to have paid an amount of Rs.6.00 lacs to the Trust on account of her share in the management in terms of the agreement. The appellant further pleaded that she engaged nearly 100 paramedical/medical personnel and their salary alone amounted to Rs.2.40 lacs per month and she paid Rs.20.00 lacs.

4) The appellant further alleged that on 22nd July, 2003, the Government forcibly took over possession of the Nursing Home. The appellant, in fact, projected the case of respondent No.2 in the writ petition by asserting that the respondent No.2, admittedly, was running and managing the Trust from 27.08.1976 till 22.07.2003 and during that entire period, no objection whatsoever was raised either by the Government or any other authority as regards the transfer and functioning of the Nursing Home. It was further contended that the Trust committed no illegality in entering into an arrangement with the appellant and on the contrary, the Government also stood to gain in the sense that the working arrangement arrived at required

investment by the appellant in the property and the Government, therefore, had not to sanction any grant-in-aid as it had done previously on 06.08.1997 by sanctioning an amount of Rs.50.00 lacs as grant-in-aid.

5) The appellant though assailed the order dated 22.07.2003, whereby the earlier Government Orders bearing No.214-ME of 1976 dated 27.08.1976 and No. Rev(NDK) 90 of 1978 dated 19.04.1978, were rescinded and the possession and management of Kashmir Nursing Home, Gupkar Road, Srinagar, was taken over by the Government, but, as it appears from the proceedings of the learned writ court, during the course of hearing, Mr. Z. A. Shah, learned senior counsel appearing for the appellant, on 15.03.2023 submitted that by efflux of time, inasmuch as the changed circumstances, the reliefs as prayed in the petition may not be capable of being granted to the appellant, yet the appellant could be compensated for the investments she had made for running the Nursing Home till the time it was taken over by the Government and he requested that the Government for that purpose can constitute a committee for assessing and evaluating the said investments made by the appellant in the Nursing Home in question and consequently pay the same to her as being legally entitled thereto.

6 In view of the submissions made by Mr. Z. A. Shah, learned senior counsel appearing for the appellant, this Court need not to record the details of the response filed by the official respondents except to the extent that it was stated by the official respondents that the relief on account of compensation cannot be claimed by the appellant as against them on the basis of a contract claimed to have been executed by her with the respondent No.2, as they were never party to the contract. The official respondents have banked upon the earlier decision of the Division Bench to assert that taking over of the Nursing Home by the Government is final and cannot be re-agitated in view of the Division Bench judgment occupying the field. It was further stated that the agreement allegedly executed by the appellant with the respondent No.2 for running the Nursing Home cannot form basis for claiming compensation from the official respondents as the respondent No.2 had no power and authority to lease out the property of the Government, which was never transferred to them and, as such, any contract having been executed between the appellant and the respondent No.2 in respect of the property of the Government is without sanction of law and is *void ab initio*. The official respondents have further submitted that at the time of taking over the property in

question, the appellant was not found running the hospital and, as such, there was no question of engaging any staff as contended by the appellant. The official respondents denied the expenditure allegedly incurred by the appellant and it was stated that the Government had paid huge amount to the erstwhile Trust for renovation/reconstruction of the building.

7) The appellant also filed a rejoinder affidavit stating therein that she had incurred more than Rs.2.50 crores before the Nursing Home was taken over by the Government and she was not a party to the earlier proceedings between the Trust and the Government and, as such, the judgment delivered in the earlier proceedings does not bind the appellant. Needless to say that this assertion of the appellant becomes meaningless in view of the submission made by Mr. Z. A. Shah, learned senior counsel, before the learned Writ Court.

8) In response to order dated 15.03.2023, the Director, Health Services, Kashmir, filed an affidavit stating therein that the subject matter of the writ petition has already been settled in the earlier round of litigation. The contents of the judgment dated 07.06.2005 were also extracted in the response/supplementary affidavit to deny the claim of the

appellant. It was further stated that the alleged agreement is only a paper arrangement intended to conceal the actual intent of the parties, which is another illegality committed by the deposed Trust with a view to siphoning off as much property of the Trust as possible and it was on account of these gross irregularities and mismanagement by the Trust that it had become necessary for the government to take over the Institute. An FIR bearing No.75/2003 under Sections 408 and 409 of RPC has also been registered with Police Station, Crime Branch. It was further stated that the appellant, who is a housewife and related to Dr. Ali Mohammad Matoo, then Chairman of the governing body of the Trust, entered into the alleged agreement with the Trust with a view to defraud the public exchequer. The amended prayer is an attempt on the part of appellant to prolong the proceedings. It was further stated that the deposed Trust had neither the authority nor any competence to handover the Institute to any third party and the alleged transfer was nothing more than a paper transaction intended for the sole purpose to defraud the exchequer. The appellant, in fact, has raised disputed and complicated questions of fact which are beyond the scope of adjudication in writ jurisdiction. It is further averred that in the judgment dated 07.06.2005, it is observed that the

Government has already incurred huge expenditure on the construction, development and maintenance of the medical Institute including Rs.95.00 lacs grant-in-aid and it is out of that grant-in-aid that the equipments and machinery including civil structures were bought and constructed as the case may be.

9) After hearing learned counsel for the parties, the learned Writ Court vide its judgment dated 09.05.2025 dismissed the writ petition of the appellant by holding that there was no privity of contract between the appellant and the official respondents and that the controversy stood already settled in terms of the judgment dated 07.06.2005.

10) The appellant has impugned the judgment passed by the learned Writ Court in this intra-court appeal thereby primarily restricting her claim only to the issue of compensation in terms of the submission recorded in order dated 15.03.2023 passed by the learned Writ Court.

ARGUMENTS:

11) Mr. Z. A. Shah, learned senior counsel appearing for the appellant has restricted the arguments only to the issue in respect of payment of compensation by submitting that before the learned Writ Court also, the issue raised by the appellant was only in respect of compensation for the

loss suffered by her but the learned Writ Court while passing the impugned judgment has wrongly rejected claim of the appellant for grant of compensation on the ground of lack of privity of contract between the appellant and the official respondents. He has further submitted that the official respondents are legally bound to compensate the appellant.

12) *Per contra*, Mr. Waseem Gull, learned GA, has submitted that the alleged agreement entered into between the appellant and the respondent No.2 was *void ab initio* and the same was executed only to defraud the public exchequer and when the possession and management of the Nursing Home was taken over by the Government, the appellant was not running the Nursing Home. He has vehemently argued that disputed questions of fact were raised by the appellant in the writ petition which could not have been adjudicated upon by the learned Writ Court while exercising writ jurisdiction under Article 226 of the Constitution of India.

13) Heard and perused the record.

DISCUSSION

14) In the writ petition preferred by the respondent No.2, following reliefs were sought:

- a. Issue an appropriate writ, direction or order quashing and setting aside Cabinet Decision No.119/Cir. Dated July 22, 2003.
- b. Issue an appropriate writ, direction or order quashing and setting aside Government Order No.820-HME of 2003 dated July 22, 2003.
- c. Issue an appropriate writ, direction or order commanding the respondents No.1 to 11 not to interfere with the working of the Trust and with, the Trust properties, including the property transferred to the Trust vide Government Order No. Rev (NDK) 90 of 1978 dated April 19, 1978 and all other property owned by the Trust.
- d. Issue an appropriate writ, direction or order commanding the respondents No.1 to 11 to return/restore the possession and management of the Kashmir Nursing Home, including the Trust Office, located at Gupkar Road, Srinagar, to the Trust;
- e. Issue an appropriate writ, direction or order to the respondents No.1 to 11 to run the Sher-i-Kashmir Institute of Medical Sciences (SKIMS) and any other institution/institutions affiliated with it in accordance with the terms of the agreement dated 17th December, 1980, through the Governing Body constituted under Clause (5) and other relevant Clauses of said Agreement.

15) As already mentioned above, the writ petition preferred by the respondent No.2 was decided by the Division Bench initially through split verdict but the judgment of Hon'ble Mr. Justice V. K. Jhanji was endorsed by Hon'ble the Chief Justice S. N. Jha. The respondent No.2 in his writ petition had contended that in order to meet the new guidelines issued by Medical Council of India, the respondent No.2 decided to contract out the management of Kashmir Nursing Home to Mrs. Sabiya Tariq i.e. the appellant herein. In the judgment rendered by

Hon'ble Mr. Justice V. K. Jhanji, it has been mentioned that Shri R. K. Raina, Director, Madr-e-Meherban Institute of Health Services, Jammu through a communication dated 18.05.2003 addressed to the Commissioner/Secretary, Health & Medical Education Department, sought the permission of the Government for opening a branch of Madr-e-Meharban Institute of Health Sciences, Jammu, at Srinagar and the Trust i.e. the respondent No.2 had, in principle, agreed to lease out the premises of Kashmir Nursing Home at Gupkar Road to the aforesaid institute for utilizing the Nursing Home both for patient care as well as for training of para-medical personnel. It was further recorded in the judgment, while upholding action of the official respondents in taking over possession and management of the Nursing Home, that the receipt of invitation cards issued by the Trust i.e. the respondent No.2 in the petition, might have only accelerated the process of takeover and rightly so, because if the property had gone into the hands of a third party, its recovery would have become more cumbersome. Further at page 187 of the judgment, the following findings have been returned by the Hon'ble Mr. Justice V. K. Jhanji:

“As regards the Kashmir Nursing Home, it is admitted by the petitioner-Trust that it is not in a position to run the same as the petitioner-trust was not equipped

with the expertise, staff and other resources or infrastructure to manage the Nursing Home on day-to-day basis and in accordance with the guidelines of the Medical Council of India. This Nursing Home was transferred to the Trust in view of its so-called cherished object of rendering medical help to the needy. The Government has invested about Rs.95 lakhs on its renovation / reconstruction. After its completion, the staff of the Nursing Home was retrenched. **Thereafter, an agreement to part with the Nursing Home was executed with a lady, namely, Sabia Tariq, who is stated to be a housewife and related to Dr. Muhammad Ali Matoo. In the writ petition, it is stated that the management contract was entered into with Doctors, a statement belied by the copy of such contract brought on record by the petitioner-Trust itself. This by itself constitutes a deliberate attempt on the part of the petitioner-Trust to mislead this Court.** In this connection, we deem it relevant to quote hereunder paragraph 26(e) of the writ petition, which reads:

"That execution of a contract for running the management of the Nursing Home by local doctors was considered a necessity by the Board of Trustees and while executing that contract with the doctors, the Trust has taken all necessary precautions for protecting the title of the property and also to ensure that the objects and the purposes of the Trust are also practiced by the party which is taking over the management of the Nursing Home. The contract for outsourcing the management of the new nursing home was prepared after keeping in mind the interest of Trust property which is clearly evidence by the clauses of the said lease."

The agreement executed by the petitioner-Trust on 12th May, 2003, photocopy whereof has been placed on record of the writ petition as annexure "D", discloses that the same has been entered into with one Mrs. Sabia Tariq D/O Ghulam Ahmad resident of Rajbagh, Srinagar. On a specific question put to Mr. M. A. Goni, learned counsel for the petitioner-Trust, on 15th October, 2003, it was stated that she is a cousin-sister of Dr. Muhammad Ali Matoo and a house-wife, but has the business handling know-how. A 40-bedded Nursing Home is

not a business establishment where inorganic commodities have to be dealt with. It is a place where human lives have to be saved from suffering. It is unfortunate that the Trust has not stuck to its objectives on the basis of which, it says that, the Government was satisfied promoting it to transfer the said Nursing Home to the Trust. If the Trust was not in a position to run the Nursing Home, it ought to have returned it and handed over its possession back to the Government. **The Trust was not the owner of the Nursing Home so as to deal with it in any manner to its liking. Instead of running the Nursing Home, the Trust intended to create third party interest therein and, as the facts suggest, for mala fide and extraneous considerations.** The averment made on affidavit, as quoted above, that the petitioner-Trust had entered into agreement with Doctors is wholly belied by the petitioner-Trust itself, lending a strength to the inference that the leasing out of the Kashmir Nursing Home was actuated by extraneous considerations. “

(emphasis added)

16) The findings/observations of Hon’ble the Chief Justice in the operative part of judgment are also very relevant, and they are extracted as under:

“In taking the aforesaid view, the learned Judges referred to various decisions and legal treatises on the subject. On consideration of the facts and circumstances of the case and materials on record, I am inclined to agree with the respondents that even if it is accepted that the opportunity of elaborate hearing should have been given, interference in the impugned order may not be in public interest. **The urgency of action can be visualized from the fact that the transfer of Kashmir Nursing Home in favour of Sabia Tariq was imminent but for the impugned action by the government which pre-empted the proposed action.** It is well known that rules of natural justice are not like rigid formulae which can be put in straitjacket, their application depends upon facts and circumstances of the particular case. In the facts of the case, I do not find any such breach of rules of natural justice as to justify interference on that ground.

Having thus given my anxious consideration to the facts of the case and the contentions raised, disagreeing with Bashir-ud-Din. J., and in agreement with V.K Jhanji, J., I would dismiss the writ petition but without any order as to costs.

Thus, ordered accordingly.”

(emphasis added)

17) The findings/observations, as extracted above, are staring at the appellant and the very genesis/substratum of the agreement is doubtful and, as submitted by the official respondents, it was merely a paper trail to defraud the government exchequer.

18) Mr. Shah, learned senior counsel appearing for the appellant, tried to persuade this court that the appellant had made huge investments in the movable assets of the Nursing Home and, in fact, they belong to the appellant and the inventory prepared by the officials concerned at the time of taking over possession and management of the Nursing Home establishes the fact that the same were taken over by the Government. It is an established fact that the agreement, if any, between the appellant and respondent No.2, was executed without obtaining the prior consent of the Government and the action of the Government in taking over the possession and management was to preempt the transfer of the Nursing Home to appellant (As observed Hon’ble Chief Justice S.N.

Jha). It is also the stand of the respondents that the huge amount was paid to Trust for renovation of building. When the very basis of the agreement alleged to have been executed between appellant and respondent No.2 is shrouded with mystery and doubt, and as per the observations of the Hon'ble Mr. Justice V. K. Jhanji, the same is actuated with malice, more particularly when Government was not a party to the said agreement, the appellant cannot have any cause of action to stake a claim of ownership over the movable assets and consequently seek compensation for the same. Recognition of any such claim in absence of any contract between the appellant and the Government is legally not permissible. Even if for the sake of arguments, it is assumed that the appellant was the owner of movable assets, she could have pursued her remedy against the Trust, however, the alleged transaction appears to be a family affair and she, being a cousin of Dr. Ali Mohd. Mattoo, who at the relevant point of time was at the helm of the Trust, remained a mute spectator and waited till the outcome of earlier litigation, perhaps with the hope that the Trust might succeed in the litigation and as the decision of the Division Bench was adverse to the interests of the appellant and respondent No.2, she initiated another round of litigation, which is nothing but

an attempt on the part of the appellant to revive and re-agitate the already settled and adjudicated issue.

19) The learned Writ Court in the impugned judgment has returned a positive finding that the appellant, having not entered into any contract/agreement with the official respondents, has no enforceable right and it was open to the appellant to seek enforcement of her rights, if any, in respect of the Nursing Home vis-à-vis Trust, but the same cannot be done in the writ proceedings.

20) We have examined the impugned judgment, and we are in perfect agreement with the reasons assigned by the learned Writ Court while dismissing the writ petition preferred by the appellant.

CONCLUSION:

21) In the light of foregoing discussion, we do not find any merit in this appeal and the same is dismissed accordingly.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Srinagar
30.10.2025
“Bhat Altaf”

Whether the Judgment is speaking:	Yes
Whether the judgment is reportable:	No