

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR
WP(C) 2783/2025**

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1. Mansoor Ahmad Mir
2. Mst. Saida
Both Son and Daughter
of Lt. Abdul Aziz Mir
R/O Sofipora Tehsil
Zainapora District
Shopian

...Petitioner(s)

Through: Mr. H.Furrahi, Advocate

Vs.

1. Union Territory of Jammu
and Kashmir through
Additional Commissioner,
Kashmir Srinagar.

...Respondent(s)

2. District Collector/Deputy
Commissioner, Shopian.

3. Sub Divisional Magistrate
Shopian.

4. Tehsildar Tehsil
Zainapora, Shopian.

5. Naib Tehsildar Zainapora,
Shopian.

6. Station House officer,
Zainapora, Shopian.

7. Zahoor Ahmad Bhat S/O.
Mohammad Abdullah Bhat

8. Mohammad Younis
Sheikh S/O Munawar Sheikh

9. Mohammad Yaqoob Malik
S/O Abdul Gaffar Malik
All residents of Sopipora
Tehsil Zainapora District
Shopian.

Through: Mr. Ilyas Nazir Laway, GA, for official respondents.
Mr. Mukhtar Ahmad Makroo, Adv, for private
respondents

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CORAM:**HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.****JUDGMENT**
10.11.2025**(Oral):**

1. The petitioners, through the medium of instant petition, have sought the following reliefs:

- i. A writ of Certiorari quashing thereby impugned order dated 04-11-2025 passed by additional commissioner Kashmir to the effect it effects the legitimate right of the petitioners to use and utilize their piece of land to the extent of 6 kanals falling under survey No. 151-min of village Sofipora Tehsil Zainapora District Shopian..*
- ii. Mandamus commanding the respondents not to interfere intervene or dispossess the petitioners from the land under their possession since time immemorial by not using or utilizing the same for approach to the land of private respondents which too is existing in the same area.*
- iii. Mandamus commanding thereby Tehsildar concerned abstain from interfering in the possessory rights of the petitioners till final outcome of the result of the instant writ petition by this Hon'ble Court.*
- iv. Any other writ, order or direction which the Hon'ble Court deems fit and appropriate be also passed in favour of the petitioners and against the respondents.*

02. From the bare perusal of the prayer clauses of the petition, the petitioners seem to have only challenged the order passed by the Additional Commissioner, Kashmir, in terms of which, the revision petition preferred by the petitioners for setting aside the orders dated 8th October, 2025 and 29th September, 2025 passed in case titled

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and Anr” has been dismissed. Although the challenge has been thrown by the petitioners to the order passed in the revision petition, but the offshoot of the same i.e., order passed by the Sub Divisional Magistrate [SDM], Zainapora, which was subject matter of the revision petition, was not called in question by the petitioners in the instant petition. Thus, the very purpose of maintainability of the instant writ petition is under cloud. Even otherwise also, the instant petition involving disputed questions of fact is not maintainable under Article 226 of the Constitution of India.

03. The Additional Commissioner, Kashmir, vide Order dated 4th November, 2025, against which challenge is thrown in the present petition, has recorded the following findings:-

“i. Sub Divisional Magistrate, Zainapora, Shoplan has heard the parties and thereafter passed the Order dated: 08-10-2025 wherein he has ordered that Instant pathway shall be constructed/restored through khasra No. 147 of Estate Sofipora Tehsil Zainapora, Shoplan which is recorded as Mehfooz Kahcharle (Shamilat section-4 (and). As such it is clear that Sub Divisional Magistrate, Zainapora has only ordered construction/restoration of pathway through Shamilat Section-4 (Menfooz-Kahcharle) land through due process of law which is in conformity with the law/rules in vogue;

ii. The order passed by the learned Sub-Divisional Magistrate does not alter or affect any Individual

proprietary right. The order has been passed by the learned Sub-Divisional Magistrate after adherence to due process of law commencing with call for a report/demarcation report from Tehsildar concerned and thereafter hearing the parties and passing a reasoned order based on factual and legal considerations;

iii. Land Involved being Mehfooz Kahcharie cannot be claimed by or occupied by any private Individual, nor can exclusive rights of ownership or possession be asserted thereon. The petitioners therefore, have no locus standi to question the orders passed by Sub-Divisional Magistrate, Zainpora;

iv. The Impugned order further aligns with the settled legal principle that Kahcharie/Shamillat lands are meant for collective use and access and must be kept free from encroachment or obstruction;

Conclusion:

In view of the above discussed facts the revision petition being devoid of merits is dismissed and the order dated 08.10.2025 passed by office of Sub Divisional Magistrate, Zainapora, Shopian is upheld. Interim orders passed, if any, shall stand vacated. File shall be consigned to records after due completion.”

04. Thus, from the bare perusal of the aforesaid order which is impugned in the instant petition as already mentioned hereinabove, the learned Revisional Court has upheld the order of SDM, Zainapora, dated 8th October, 2025 by ordering that the instant pathway shall be

constructed/restored through Khasra No. 147 of Estate Sofipora, Tehsildar Zainapora Shopian which is recorded as Mehfooz Kahcharie (Shamilat Section-4) land, after following due process of law and the order passed by the concerned SDM, in no way, alter or affect any individual proprietary rights of the parties as the same has been passed after adherence to due process of law and in the light of the demarcation report of the concerned Tehsildar as well as after affording an opportunity of being heard to the parties.

05. Heard learned counsel for the petitioners as well as caveators at length and perused the material on record.

06. The petitioners, in the instant petition, could not make out a case which would warrant interference by invoking extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, as this Court, after perusing the material on record and the findings recorded by the learned Revisional Court, does not find any illegality or infirmity in the order passed by the Additional Commissioner, Kashmir. This Court is in agreement with the findings recorded by the learned Revisional Court which are strictly in consonance with law and on the basis of demarcation report of the concerned Tehsildar. Therefore, this Court does not find

any fault with the report submitted by the concerned Revenue Authority.

07. In addition, while parting with the order passed by the Additional Commissioner, Kashmir, a finding has been recorded that the land involved being Mehfooz Kahcharie cannot be claimed or occupied by any private individual nor can exclusive rights of ownership or possession be asserted thereon and in the said backdrop also the petitioners do not have any locus standi to challenge the order passed by the SDM, Zainapora and the revision petition was dismissed rightly. Therefore, this Court, while exercising the writ jurisdiction, will not venture into the disputed questions of ownership rights of the petitioners.

08. Since the petitioners came forward with the present petition without there being a specific challenge to the basic order passed by the SDM, Zianapora, as also disputed questions of facts have been raised in the instant writ petition which cannot be adjudicated upon by this Court while exercising the writ jurisdiction under Article 226 of the Constitution of India, the same deserves to be dismissed in limini.

09. The Allahabad High court in case titled as “*Sushila Chitra Mandir Versus State of U.P. and others*” **reported as 2004 SCC OnLine All 678** has held as under:-

“7. Challenging the consequential order without challenging the basic order is also not permissible.

8. In C.P. Chitranjan Menon v. A. Balkrishnan¹, the Hon'ble Supreme Court held that in absence of challenge the basic order, subsequent consequential order cannot be challenged.”

10. In the present case, the petitioners have only challenged the revisional order dated 04.11.2025 passed by the Additional Commissioner, Kashmir, while the basic and foundational orders dated 29th September, 2025 and 8th October, 2025 passed by the Sub-Divisional Magistrate, Zainapora, which are the source of the subsequent action, has not been called in question. Unless the foundational are challenged, any challenge to the consequential order alone is legally unsustainable.

11. The Honble Supreme Court in case titled as *Abl International Ltd. & Anr vs Export Credit Guarantee Corporation Of India and others* reported as 2004(3) SCC 553 has affirmed that:

“A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction Stunder Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in the case of Gunwant Kaur v. Municipal Committee, Bhatinda

where dealing with such a situation of A disputed questions of fact in a writ petition this Court held: (SCC p. 774, paras 14-16).

"14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limini will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons."

12. In the present case, the petitioners have raised disputed questions of ownership and possession over land claimed to be Kahcharai/Shamlat land, which inherently requires a detailed factual adjudication, examination of revenue records, demarcation reports, and oral evidence

all of which falls beyond the writ court's jurisdiction under Article 226.

13. In view of the observations made herein above the instant petition which is devoid of any merit is **dismissed** and the order dated 4th November, 2025 passed by the Additional Commissioner, Kashmir is upheld.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
10.11.2025

"Shamim Dar"

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

