

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

**LPA 358/2024 in
[WP(C) 81/2023] c/w
LPA 30/2025**

UNION OF INDIA AND ANR

...Petitioner(s)

Through: Mr. Bikramdeep Singh, DY AG
Mr. Nazir Ahmad Bhat, CGC

Vs.

SUSAIN KHALID AND ANR

...Respondent(s)

Through: Mr. Hakim Suhail Ishtiaq, Advocate

CORAM:

**Hon'ble Mr. Justice Sanjeev Kumar, Judge.
Hon'ble Mr. Justice Sanjay Parihar, Judge.**

ORDER

18.11.2025

01. In these two intra court appeals one filed by Union of India and other by the Cantonment Board, an order and judgment dated 27.08.2024, passed by learned Single Judge of this Court {writ court} in WP(C) No. 81/2023, is subject matter of challenge.

02. What was challenged by the writ petitioner Susain Khalid in WP(C) No. 81/2023 was a notice of demolition issued by

the Cantonment Board in terms of Section 248 of the Cantonment Act, 2006.

03. On the face of it, the aforesaid notice was appealable under Section 340 of the said Act, however, the writ petitioner without availing the statutory remedy available under the Act, approach the writ Court on the pretext of challenging the varies of Section 248 of the Cantonment Act, 2006.

04. The writ Court has not accepted the plea of the writ petitioner to the extent that section 248 of the Cantonment Act, 2006 is ultra varies the Constitution but has found the impugned order of demolition issued under section 248 bad in the eye of law.

05. Feeling aggrieved by the impugned judgment passed by the writ court, both the Union of India as well as the Cantonment Board are before us in these two intra court appeals.

06. Having heard learned counsel for the parties and perused the material available on record, we made it clear to the learned counsel appearing for the writ petitioner-respondent that in the face of equally efficacious statutory remedy of appeal available under Section 340 of the Cantonment Act,

2006, the writ petition was not maintainable, more particularly, when there was no substance found in the plea of the writ petitioner challenging the Constitutionality of Section 248 of the Cantonment Act, 2006.

07. The learned counsel appearing for the writ petitioner-respondent herein was fair enough to concede this position and prayed for leave of this Court to withdraw the writ petition with liberty to approach the Appellate Authority under the Cantonment Act, 2006. He, however, prayed that the period which writ petitioner has spent before this court be excluded from computing the period of limitation for filing the appeal.

08. Having considered the rival contentions and fair stand taken by the learned counsel appearing for writ petitioner-respondent, we allow both these appeals and set aside the impugned order dated 27.08.2024 passed by the writ court in WP(C) No. 81/2023 and leave it open to the appellant to challenge the order of demolition dated 13.01.2023, before the Appellate Authority in terms of section 340 of the Cantonment Act, 2006.

09. Needless to say that in case the writ petitioner avails the remedy of appeal within a period of two weeks from today, the period spent by writ petitioner before the writ court as well as before us shall not be reckoned towards limitation for filing such appeal.

10. There shall be status quo with regard to the structure for a period of four weeks from today.

11. Both the appeals are ***disposed of***.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR:

18.11.2025

"S.NUZHAT"