

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

OWP No. 943/2007

IA No. 1368/2007

IA No. 234/2008

Reserved on: 05.03.2026

Pronounced on: 11.03.2026

Uploaded on: 11.03.2026

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

Assadullah Jan (Abraham)

S/O Sh. Saif-ud-Din Jan

R/O Magarmal Bagh, Srinagar,

At present, House No.69, Christian Colony,

Vir Marg, Jammu.

.....Petitioners/Appellants

Through: Mr. Anuj Dewan Raina, Adv.

Vs.

1.State of Jammu & Kashmir

Th. Secretary to Government,

Revenue Department,

J&K Govt. Civil Secretariat,

Srinagar.

2 Financial Commissioner,

J&K Government,

Jammu/Srinagar.

3.Relief Commissioner (Migrants),

Relief Organization, Jammu.

4. Deputy Commissioner Vigilance,

Relief Organization, Jammu.

5. Zonal Officer,

Zone Talab Tillo (NC-A)

Office of Relief Commissioner(M)

Relief Organization, Jammu

..... Respondents

Through: Ms. Nazia Fazal, Adv. vice
Mrs. Monika Kohli, Sr. AAG
Ms. Saleeqa Sheikh, Adv. vice
Mr. Raman Sharma, AAG

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

(JUDGMENT)

1. The petitioner has filed the present writ petition under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu

and Kashmir, seeking quashment of Communication No. Dev/R/C/1732 dated 09.05.2007 issued by respondent No. 3, as well as Communication No. Rev./MR/39/2007 dated 09.03.2007 issued by respondent No. 1, and all other consequential and incidental actions taken by the respondents, whereby conscious attempts are being made to rescind/revoke the migrant status of the petitioner. The petitioner also seeks a direction restraining the respondents from taking any action detrimental to the migrant status of the petitioner as granted vide Order No. 369 of 1999 dated 07.08.1999 issued by respondent No. 3. The petitioner further seeks a direction commanding the respondents to extend all benefits that are admissible in favour of a registered migrant to the petitioner.

2. The case of the petitioner as set up by him is that in the year 1984, he married a Christian lady, namely, Ruby Madhu Brown, and thereafter he converted to Christianity. Since then, he has been known as A. U. Abraham. In support of his contention, the petitioner relies upon a certificate issued by the Centre Pastor, The Pentecostal Mission, New Delhi. Upon conversion to Christianity, the petitioner was residing at his residence at Magarmal Bagh, Srinagar, along with his family members, including his father. In the year 1991, the father of the petitioner allegedly started receiving threats from certain organizations, threatening elimination of the petitioner if he continued to profess Christianity. It is stated that due to continuous threats, the petitioner, who was working as Estates Supervisor at Mallinson Girls School, Sheikh Bagh, Srinagar, was compelled to leave his job. His minor son, Madhur Jacob Abraham, who was studying at Burn Hall Higher Secondary School, Srinagar, was also forced to discontinue his studies at the said institution. To substantiate his residence at Magarmal Bagh, Srinagar, the

petitioner has relied upon a copy of FIR No. 942 of 1987 registered at Police Station Shergari, Srinagar on 19.11.1987, wherein, besides the names of other family members, the name of the petitioner is also reflected as an accused being resident of Magarmal Bagh.

3. It is further stated that due to continuous threats, the petitioner was forced to leave his employment and migrate from the Valley along with his minor child. However, he continued to visit the Valley intermittently to look after his aged father until his death in the year 1997. During his lifetime, the father of the petitioner executed a registered Gift Deed in favour of the petitioner in respect of the residential house situated at Magarmal Bagh, Srinagar, which was duly registered before the Sub-Registrar, Srinagar. However, after the death of his father on 02.01.1997, the petitioner, finding himself alone in the prevailing circumstances, could not visit the Valley and consequently could not maintain his property.

4. It is further stated that as the petitioner had no source of income after migrating to Jammu, as such, he approached the concerned authorities seeking registration of his family as migrants. After verification of the facts relating to his migration from various quarters, the authorities issued Order No. 369 of 1999 dated 07.08.1999, whereby the petitioner and his family were declared as migrants.

5. Per contra, the respondents have filed objections stating that the relief benefits in favour of the petitioner and his family continued until the year 2007. It is submitted that the Administrative Department, vide letter No. REV/MR/39/2007 dated 09.03.2007, directed the Relief Commissioner (Migrants) to report whether the registration of the petitioner had been cancelled and, if not, the reasons thereof. It was further directed that the

registration of the beneficiary be cancelled forthwith and responsibility be fixed for delay and extension of undue benefits. Accordingly, the said direction was conveyed to respondent No. 5 vide letter No. DCV/R/C/1732 dated 09.05.2007 issued by the then Deputy Commissioner (Vigilance). Consequently, the relief benefits in favour of the petitioner and his family were stopped in the year 2007.

6. The respondents have further contended that there is no valid proof or threat perception from any concerned security agency and, therefore, the allegations regarding threats to the petitioner from any organization are denied. It is also stated that there is no cogent proof that the petitioner was working as Estates Supervisor at Mallinson Girls School, Sheikh Bagh, Srinagar. However, the respondents have admitted that the petitioner had represented before the authorities for registration of his family as migrants and that, vide Order No. 369 of 1999 dated 07.08.1999, the petitioner's family was registered as migrants.

7. It is further stated that the Administrative Department, vide Order No. REV/MR/39/2007 dated 09.03.2007, directed respondent No. 3 to report whether the registration of the petitioner had been cancelled. The respondents have also stated that OWP No. 450/2005 titled *Assadullah Jan vs. Financial Commissioner & Ors.* was disposed of on 06.05.2017, but the petitioner did not produce the said order or intimate the outcome of the said petition.

8. It is further contended that, as per the communication dated 09.05.2007, the petitioner was found registered as a migrant illegally and, after thorough investigation by the concerned agencies, respondent No. 1 directed respondent No. 3 to stop the undue relief benefits being extended to the petitioner, as a migrant by the Relief Organization.

9. Learned counsel for the petitioner submits that since the petitioner had left behind both movable and immovable properties in his residential house at Magarmal Bagh, Srinagar, the same were allegedly being misused by his brother, who had also unlawfully occupied the residential house of the petitioner. The petitioner, therefore, submitted a written representation before the Relief Commissioner (Migrants), Jammu, requesting protection of his property situated at Magarmal Bagh, Srinagar. Pursuant thereto, the Relief Commissioner (Migrants), Jammu, vide communication dated 31.10.2002, requested the District Magistrate/Deputy Commissioner, Srinagar to take appropriate action for eviction of the unlawful occupant of the petitioner's property in terms of the provisions of the J&K Migrants Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997.

10. Consequently, respondent No. 2, after calling for a report regarding the illegal occupation of the property by the petitioner's brother, issued Communication No. 1101-02/RD/DM/MIG/2002 dated 19.12.2002, requesting the Tehsildar, Srinagar to evict the illegal occupant under law and to take the property into custody under the provisions of the 1997 Act. In furtherance thereof, respondent No. 4, vide Communication No. 976-77/RP dated 21.12.2002, directed the concerned Naib Tehsildar to execute the order of the District Magistrate, Srinagar and furnish a compliance report.

11. It is further contended that the brother of the petitioner, who admittedly was in occupation of the property, preferred an appeal before the Financial Commissioner against the order dated 19.12.2002 passed by the District Magistrate, Srinagar. The Financial Commissioner, vide interim order dated 24.12.2002, stayed the operation of the said order till disposal of the matter. Upon receipt of notice, the petitioner filed objections seeking vacation

of the ex-parte interim order dated 24.12.2002. Ultimately, the Financial Commissioner, vide order dated 07.05.2003, allowed the appeal and remanded the matter to the District Magistrate, Srinagar, with directions to decide the matter afresh after providing the parties an opportunity of being heard and to pass appropriate orders in accordance with law. The District Magistrate, Srinagar, vide judgment dated 19.07.2003, rejected the case of the petitioner on the ground that the petitioner had shifted from the Valley prior to 01.11.1989, and therefore his case was not covered under the provisions of the Migrant Act.

12. Aggrieved by the said order, the petitioner preferred an appeal before the Financial Commissioner, which was registered as File No. 151/FC-AP. However, the Financial Commissioner, vide judgment dated 12.07.2005, dismissed the appeal filed by the petitioner. Being aggrieved, the petitioner approached this Hon'ble Court by filing OWP No. 450/2005, titled *Assadullah Jan vs. Financial Commissioner & Ors.* This Court, upon consideration of the matter, passed an interim order dated 07.11.2005, whereby the impugned judgment was stayed and it was further directed that the order of the Relief Commissioner dated 07.08.1999 shall remain operative. It is stated that despite the pendency of the aforesaid writ petition and the clear directions issued by this Court, the respondents have been acting in contravention of the said judicial order and have been harassing the petitioner.

13. Learned counsel for the petitioner submits that in the process, the Deputy Commissioner (Vigilance), Office of the Relief Commissioner, Jammu, vide Communication No. DCV/R/C/1732 dated 09.05.2007, to respondent No. 5 directed stoppage of relief benefits to the petitioner, in

compliance to Administrative Department letter No. Rev/MR/39/2007 dated 09.03.2007, whereby directions had been issued to cancel the registration of the petitioner as a migrant and to report compliance; that upon learning of the aforesaid communications dated 09.05.2007 and 09.03.2007, the petitioner approached the respondents through his counsel by issuing a legal communication explaining the factual position, particularly the pendency of OWP No. 450/2005, and requested the respondents to refrain from harassing the petitioner. Respondent No. 4, in response to the said communication, vide Communication No. DCV/R/C/1941 dated 28.06.2007, addressed to the Secretary to the Government, Revenue Department, acknowledged that the migrant status of the petitioner was protected by virtue of the interim order dated 07.11.2005 passed by this Court and sought appropriate orders in that regard. However, despite the same, the respondents continued to take steps detrimental to the migrant status of the petitioner in contravention of the judicial order.

14. Learned counsel for the respondents next argued that the District Magistrate Srinagar had rejected the case of the petitioner in the ancillary proceedings on the ground that the petitioner had shifted from Valley prior to 1st November 1989, as such, his case was not covered under the provisions of the Migrant Act, so as to deal with his house property regarding which he had dispute with his brother and the order passed by the District Magistrate was also affirmed by the Financial Commissioner, J&K vide judgment dated 12.07.2005. As such, the petitioner who had no status of being a migrant could not claim that he should be continued to be registered as such so as to draw benefits of being a migrant from Kashmir valley.

15. They further argue that the impugned orders have been passed by the respondent- Relief Organization Authorities perfectly in consonance with law as the petitioner was alleged to have been drawing benefits from the relief organization illegally, without being a migrant to be entitled to such benefits. It was finally prayed that the petition be dismissed and the impugned order be upheld.

16. Heard learned counsel for the parties, perused the file and considered the matter.

17. The petitioner who claimed to have converted to Christianity from the faith of Islam, after his marriage to a Christian woman in the year 1984 and that couple was blessed with the birth of a son, however, after the onset of militancy in the Kashmir valley, the petitioner being a soft target received threat from the terrorists for his elimination, in case, he continued to profess Christianity. As such, on an application moved to the Minister in-charge the petitioner and his family was registered as migrants vide Order No. 369 of 1999 dated 07.08.1999 having his stay in Christian Colony of Jammu City. It appears that the impugned orders have been passed by the respondents without seeking any show-cause from the petitioner, as such, the respondents have not followed the principle of natural justice of being heard before an adverse order has been passed against him and that the relief benefits to him were also stopped by the respondent on 09.05.2007.

18. The petitioner having been registered as a migrant, could have been divested of his status as a migrant only after holding an inquiry by associating the petitioner by seeking his explanation/show-cause, as to why he and his family should not be de-registered from being migrants. The impugned orders having been passed against him, whereby his status being migrant was

ordered to be withdrawn, without resorting to the aforesaid exercise of granting an opportunity of being heard to the petitioner, has resulted in stoppage of the relief benefits. Though the declaration made by the District Magistrate Srinagar in a property related case that the petitioner was not a migrant in view of provisions of the Migrant Act so as to claim protection of his house property may be relevant for the consideration of the respondent authorities, but an *ex parte* and unilateral decision on the part of the respondents, without associating the petitioner to the matter, renders the impugned orders arbitrary and not sustainable.

19. Having regard to the foregoing reasons and the observations made hereinabove, this Court is of the considered opinion that the impugned orders are liable to be quashed. The petition is, thus, allowed and the impugned orders are quashed with liberty to the respondents to proceed in accordance with law, after providing an opportunity of being heard to the petitioner, to take a final decision with regard to his migrant status. Till such an exercise is undertaken and concluded, the petitioner's status as migrant is ordered to be continued, holding him and his family entitled to receive all the relief benefits to which he was entitled, before issuance of impugned orders.

20. The petition is, accordingly, **allowed** along with pending applications.

(M A Chowdhary)
Judge

JAMMU
11.03.2026
Raj Kumar

Whether order is speaking: Yes/No
Whether order is reportable: Yes/No