

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

WP (C) No. 390/2025

Date of pronouncement: 20.07.2026

Uploaded on: 22.07.2026

**Maheen Singh Aged 59 Years,
S/o Basia Ram
R/o Village Dullangal
Tehsil Bani District Kathua**

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

Through:- Mr. Ajaz Chowdhary, Advocate

V/s

1. **U.T of J&K through
Principal Secretary to Govt.
Rural Development, Department
Civil Secretariat, Jammu**
2. **Sub Divisional Magistrate, Bani
Chairman Committee**
3. **Tehsildar, Bani**
4. **Town Planning Officer, Duggan**
5. **Block Development Officer,
Duggan**

.....Respondent(s)

Through:- Ms. Chetna Manhas, Assisting Counsel to
Mrs. Monika Kohli, Sr. AAG

**CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE
ORDER (ORAL)**

1. The petitioner has challenged Order No. SDM/Bani/2024-2025/576 dated 24.12.2024, whereby his application seeking permission for construction of shops was rejected. The petitioner contends that the impugned order has been passed in violation of the procedure prescribed under Rule 155 of the Jammu and Kashmir Panchayati Raj Rules, 1996. It is submitted that he had duly applied for permission by furnishing all requisite documents, including a building plan duly authenticated by the Junior Engineer, PWD (R&B), Sub-Division,

Bani. He further deposited the prescribed fee of Rs. 18,731/- before the Block Development Officer, Duggan. During the processing of his application, respondent No. 2, being the Chairman of the Committee, sought reports from the Tehsildar, Bani, and other revenue authorities, all of whom reportedly confirmed that the petitioner was in lawful ownership and possession of the land over which the proposed construction was to be raised. The petitioner also obtained No Objection Certificates (NOCs) from the Jal Shakti Department, PMGSY, and the Executive Engineer, JPDCL.

2. The petitioner further submits that while his application was under consideration, one Mahesh Raj submitted an application before the Sub-Divisional Magistrate, Bani, on 27.06.2024 seeking rejection of the petitioner's request. According to the petitioner, respondent No. 2 rejected his application without properly verifying the factual position. It is asserted that the petitioner is entitled to a share of 14 Marlas in the Shamilat Deh land, out of which he has already utilized only 5 Marlas for construction. Consequently, he claims entitlement to construct on the remaining 9 Marlas forming part of his share.
3. Upon issuance of notice, respondents Nos. 1, 4, and 5 failed to file their objections despite repeated opportunities. Accordingly, their right to file a response was closed. Respondents Nos. 2 and 3, however, filed a reply contending that the impugned order was passed strictly in accordance with law. They submitted that the petitioner had commenced construction without obtaining valid permission and that mere deposit of the prescribed fee does not create any vested right to

obtain permission for construction. It is further averred that the petitioner's application was rejected only after a spot inspection conducted by the competent authorities. The respondents also contend that the issuance of NOCs by other departments does not automatically entitle the petitioner to undertake construction.

4. The respondents further submit that the land in question is Shamlat Deh land, which constitutes common village land belonging collectively to the inhabitants of the village. According to them, the petitioner is already in unauthorized possession of Shamlat Deh land in excess of his lawful share and has also raised unauthorized constructions over both Shamlat Deh and State land. On these grounds, it is contended that the petitioner is not entitled to any relief.
5. Learned counsel appearing for both parties agreed that the writ petition could be disposed of at the admission stage. Learned counsel for the petitioner argued that it is an admitted position that the proposed construction is sought to be raised on Shamlat Deh land. He submitted that the petitioner owns 8 kanals and 1 marla of proprietary land in the village and, therefore, his proportionate share in the Shamlat Deh land works out to 14 marlas. According to the petitioner, although the respondents allege that he is in possession of 5 kanals and 5 marlas of Shamlat Deh land, the fact remains that he has constructed only over 5 marlas. Therefore, he still has 9 marlas available out of his lawful share on which he is entitled to raise construction.

6. In reply, learned counsel for the respondents argued that mere possession of Shamlat Deh land does not confer any right upon the petitioner to raise construction thereon. It was contended that unless the Shamlat Deh land is formally partitioned or demarcated among all co-sharers in accordance with law, no individual co-sharer can claim an exclusive right to undertake construction over any specific portion of such common land.
7. Having heard learned counsel for the parties and perused the record, this Court finds that the controversy involved in the present petition is limited to the legality and sustainability of the order dated 24.12.2024 passed by the Sub-Divisional Magistrate, Bani, whereby the petitioner's application seeking permission to raise construction of shops has been rejected.
8. The record reveals that the respondents themselves have admitted that the petitioner is the owner of 08 Kanals and 01 Marla of proprietary land in the village and, on that basis, his proportionate share in the Shamlat Deh land works out to 14 Marlas. The impugned order further records that the petitioner has already utilized 05 Marlas of the said share by raising construction. Consequently, even according to the respondents' own case, the petitioner is left with an unutilized share of approximately 09 Marlas.
9. The principal reason assigned for rejecting the petitioner's application is that he is allegedly in possession of Shamlat Deh land in excess of his proportionate share and has also encroached upon certain State

land. In the opinion of this Court, the said reasoning cannot be sustained.

10. The question whether the petitioner is in possession of Shamlat Deh land beyond his lawful share is an issue entirely distinct from his right to seek permission for construction over the land to which he is admittedly entitled. If the respondents are of the view that the petitioner is occupying Shamlat Deh land in excess of his share or is in unauthorized occupation of any State land, nothing prevents them from initiating appropriate proceedings under the applicable law for removal of such encroachment or for restoration of possession. However, such allegations cannot be made a ground to deny the petitioner consideration of his application for construction over the extent of land corresponding to his admitted share.
11. The settled legal position is that every co-sharer in the proprietary body possesses a proportionate interest in the Shamlat Deh corresponding to his proprietary holding, subject to the rights of other co-sharers and the provisions governing common land. Unless and until the petitioner's rights are curtailed or divested in accordance with law, the respondents cannot ignore the admitted extent of his share while considering his application under Rule 155 of the Jammu and Kashmir Panchayati Raj Rules, 1996.
12. The impugned order itself acknowledges that the petitioner is entitled to a share measuring 14 Marlas. Once such entitlement is admitted, rejection of his application solely on the basis of alleged excess possession, without first determining the nature and extent of such

possession in appropriate proceedings, is arbitrary and legally unsustainable.

13. This Court further finds that the Committee constituted under Government Order No. 11-RD&PR of 2022 was under a statutory obligation to consider the petitioner's application objectively and in accordance with Rule 155 of the Jammu and Kashmir Panchayati Raj Rules, 1996. Instead of examining whether the petitioner fulfilled the statutory requirements for grant of permission, the Committee rejected the application by relying upon allegations which are required to be adjudicated independently in accordance with law.
14. The impugned order, therefore, reflects non-application of mind, takes into consideration irrelevant factors, ignores relevant and admitted facts, and consequently fails to satisfy the test of fairness and reasonableness expected of an administrative decision.
15. For the foregoing reasons, this writ petition deserves to succeed. Accordingly, Order No. SDM/Bani/2024-2025/576 dated 24.12.2024 is quashed. The matter is remitted to the Committee constituted under Government Order No. 11-RD&PR of 2022 for fresh consideration of the petitioner's application strictly in accordance with Rule 155 of the Jammu and Kashmir Panchayati Raj Rules, 1996 and the applicable Government Orders. While reconsidering the matter, the Committee shall confine itself to the petitioner's entitlement for grant of permission in respect of the land corresponding to his admitted share and shall not reject the application merely on the basis of allegations regarding excess occupation of Shamilat Deh land or encroachment

upon State land, which may, if so advised, be dealt with separately in accordance with law. A fresh speaking order shall be passed after affording the petitioner an opportunity of hearing, preferably within a period of six weeks from the date a copy of this order is made available.

16. The writ petition is, accordingly, **allowed** in the above terms. Pending application(s), if any, shall also stand **disposed of**.

(Sanjay Parihar)
Judge

JAMMU
20.07.2026
Asif Tantray

