

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

WP(C) No.920/2023

Pronounced on : 12.05.2026

Uploaded on : 13.05.2026

Mahant Subash Shah, Age 73 years
Chela of Mahant Harikrishan Shah, Mahant
Suthrashahi, Pakka Danga, Jammu

....Petitioner(s)

Through :- Ms. Shivani Jalali, Sr. Advocate with
Ms. Isha Razdan, Advocate

V/s

1. Union Territory of Jammu & Kashmir
Through its Principle Secretary,
Housing & Urban Development
Department, Civil Secretariat, J&K,
Jammu

2. Chairman, Municipal Council, Kathua.

3. Tajual Tareef, Tehsildar,
Tehsil and District Kathua.

4. Neetu Devi,
W/o Late Satish Kumar,
R/o Shiv Mandir, Ward No.6, Teshil and
District Kathua.

....Respondent(s)

Through :- Mr. Suneel Malhotra, GA
Mr. Vikas Mangotra, Advocate

CORAM: HON'BLE MS.JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

ORDER

12.05.2026

1. By this petition, the petitioner herein *inter alia* seeks to quash all the proceedings holding respondent No.4 as beneficiary including the permission granted by the Municipal Council on a land owned by the petitioner with a further directions to the official respondents to restrain the private respondent from raising construction under PMAY Scheme on the temple land at Dharamshalla, Suthrian, Ward No.7, Kathua.

2. It is submitted that the petitioner is successor-in-interest of Suthrashahi Sect, which has its properties in Jammu & Kashmir, one such property is Dharamshala and appurtenant situated at Ward No.7, Tehsil and District Kathua with a Shiv Temple inside it. Respondent No.4 is stated to be the wife of late One Satish Kumar, who was pujari of the Shiv Temple situated in the premises of Suthrashahi property, belonging to the petitioner. According to the petitioner, respondent No.4, sought benefit under the Pradhan Mantri Awas Yojna (PMAY), a Central Government Scheme, aimed at providing affordable houses to the poor. She also sought declaration from Tehsildar, Kathua in order to take benefit of the scheme besides seeking permission from the Chairman, Municipal Council, Kathua for raising construction. It is stated that the Tehsildar, Kathua clandestinely without confirming the title of the land allowed the late husband of respondent No.4 to go ahead with the construction and accepted him as a beneficiary under the PMAY scheme.
3. On coming to know about the permission granted in favour of respondent No.4, petitioner vide communication dated 11th November, 2022 requested the Chairman, Municipal Council, Kathua to restrain the private respondent from raising any illegal construction over the property owned and possessed by the petitioner. When representation filed by the petitioner did not yield any result, a legal notice was issued to respondent Nos. 2 and 3 but the same also in vain, which constrained the petitioner to file the instant petition.
4. *Per contra*, in the objections filed by the official respondents, it is stated that the petitioner has raised disputed question of facts, which cannot be adjudicated by this Court in exercise of extraordinary writ jurisdiction. It

is stated that the Government of India launched Pradhan Mantri Awas Yojana (Urban Mission) Scheme for all over India including that of J&K, in the UT of J&K, Housing Board is the nodal agency for implementation of the same. It is further stated that respondent No.4 was one of the beneficiaries of the scheme and pursuant to the report and recommendations of the revenue authorities, her dwelling unit has been sanctioned for construction under the supervision of nodal agency.

5. The claim of the petitioner is also resisted by respondent No.4, who in her objections has stated that she is a widow of late Sh. Satish Kumar and is permanent resident of Ward No.7, Kathua. It is further stated that family of her deceased husband is residing in Shiv Mandir near Sabzi Mandi Main Bazar, kathua for the last more than hundred years. According to her, the temple under reference is the ancestral property of forefathers of her husband, whose samadhis are in the temple. It has further been stated that respondent No.4 along with her in-laws has been in settled possession of the subject property and it is only after proper verification, benefit under PMAY scheme has been granted in her favour.
6. Learned counsel for the petitioner would argue that after his succession to the Sutrashahi Gaddi, ownership rights with respect to all the temples, Dharamshala including the one at Ward No.7, Kathua devolved upon the petitioner, as such, it is not understandable as to how the respondents without affirming the ownership as well as title of the land have granted permission to the private respondent to raise construction and to render her eligible under PMAY scheme.
7. On the other hand, learned counsel for private respondents as well as for the official respondents would argue that the issue sought to be raised in

this writ petition are disputed and factual in nature, which cannot be gone into in the exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India. It is stated that petitioner has no right, title or interest in the subject property and that the private respondent and her in-laws are in settled possession of the subject property.

8. Heard learned counsel for the parties and perused the material available on record.
9. From the pleadings of the parties, it becomes evident that the ownership and possession of the petitioner over the temple, which is subject matter of this writ petition has been specifically denied by the private respondent. Even, as per the official respondents, benefit of PMAY scheme has been granted in favour of the private respondent pursuant to the report and recommendations of the revenue authorities.
10. The petitioner is relying upon order dated 21.01.1983 passed by the District Judge, Kathua, in an appeal titled Uttam Chand v. Subash and others, wherein, as per the petitioner, it has been decided that the property in dispute is owned and possessed by the petitioner, whereas perusal of the same clearly reflects that the Court of learned District Judge, Kathua has not given any finding with respect to the ownership and possession of the petitioner with respect to the property in question. Moreover, the petitioner has failed to show his entitlement or locus to file the present petition.
11. In the present petition, the dispute between the parties is relating to property rights with regard to the Shiv Temple situated at Ward No.7 Kathua for which the appropriate remedy is before the civil courts because the questions of fact can be answered on the basis of the evidence adduced

by the parties but not in a writ petition filed under Article 226 of the Constitution.

12. In **Dwarka Prasad Agrawal v. B.D.Agrawal, (2003) 6 SCC 230**, the Supreme Court has observed that a writ remedy is not available for resolution of a property or a title dispute. Relevant extract of the judgment is reproduced hereunder:

“The High Court derives its jurisdiction in terms of [Article 226](#) of the Constitution of India, if an occasion arises therefor, to make judicial review of the order passed by a statutory authority. It is beyond any cavil that no writ can be issued if the disputes involve private law character. The writ court has also no jurisdiction to determine an issue on private dispute over a property or right under a partnership.”

13. The Supreme Court in **Roshina T v. Abdul Azeez K.T. and others, (2019) 2 SCC 329** observed thus:

“It has been consistently held by this Court that a regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons. The remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant. (See Mohan Pande. Usha Rani, 1992 (4) SCC 61 and Dwarka Prasad Agrawal v. B.D. Agrawal (2003) 6 SCC 230).

14. From the aforementioned judicial pronouncement of the Supreme Court it becomes crystal clear that a regular suit is the appropriate remedy for settlement of property disputes between the private parties and no writ can be issued in such a matter.
15. In the instant case, there is a property dispute between the petitioner and respondent No.4 with regard to the ownership and possession over a Temple situated at Ward No.7, Kathua, which indeed is a disputed question of facts, cannot be determined in these proceedings as the appropriate remedy for seeking settlement of property dispute between the private persons is before the Civil Court.
16. In view of the above, the writ petition is dismissed as not maintainable with liberty to avail the remedy before the civil court, if so desires.

Jammu:
12.05.2026
Vinod.



(Moksha Khajuria Kazmi)
Judge

Whether the order is reportable: Yes/No