

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP (C) No. 1655/2025

CM No. 3812/2025

CM No. 4771/2026

Date of Pronouncement: 27.07.2026

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**Ishri Devi, Wd/o Late Sadiq,
R/o Shiv Nagar, Sambal Road
Tehsil & District Udhampur**

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

Through: Mr. Ajaz Chowdhary, Advocate.

V/s

**01. Union Territory of Jammu & Kashmir
Through Commissioner/Secretary to Govt.
Revenue Department, Civil Secretariat,
Jammu/Srinagar.**

**02. Deputy Commissioner (Collector),
Udhampur.**

**03. Tehsildar (Assistant Collector First Class),
Udhampur.**

**04. Chief Executive Officer,
Municipal Committee Udhampur.**

**05. Dr. Santosh Thomas S/o P.M. Thomas,
R/o Union Church, Shiv Nagar, Jammu.**

..... Respondent(s)

Through: Ms. Nazia Fazal, Assisting counsel vice
Mrs. Monika Kohli, Sr. AAG for R-1 to 3.
Mr. Suneel Malhotra, GA for R-4
Mr. Vikas Mangotra, Sr. Advocate with
Assisting counsel for R-5.

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
27.07.2026

01. Heard at admission stage.

02. The petitioner, through the medium of the present writ petition, calls in question eviction order No. TUDR/OQ/2025-26/847-48 dated 18.05.2025,

issued by respondent No. 3-Tehsildar (Assistant Collector First Class), retrieval of State land falling under Khasra No. 60, situated at Village Round, Tehsil and District Udhampur. Challenge is also laid to consequential eviction notice No. MCU/2025-26/647-51 dated 31.05.2025, whereby the petitioner was called upon to vacate the house and remove her belongings from the aforesaid State land.

03. The case projected by the petitioner is that her husband was engaged as a Chowkidar by respondent No. 5 and, during his lifetime, had constructed a residential house over land measuring 10 marlas. He died in the year 2009. The petitioner asserts that she continued to occupy the premises thereafter. In an earlier round of litigation, being OWP No. 54/2018, this Court, vide order dated 19.01.2018, directed that the petitioner would not be dispossessed except by following due process of law.
04. The dispute, however, has a chequered history. The petitioner instituted a civil suit seeking protection of her possession. Interim protection granted in her favour in respect of land measuring 05 marlas and 05 sarsai was subsequently vacated. The Civil Court, while relying upon the judgment reported as AIR 2012 SCW 2162, observed that the possession of the petitioner was permissive in character, arising out of the engagement of her husband as a Caretaker/Watchman, and that such possession could not be protected by an injunction against the person entitled to the property. The appeal preferred against the said order also came to be dismissed.
05. Parallel proceedings were also taken before the Revenue Authorities under Section 133 of the J&K Land Revenue Act in respect of land falling under Khasra No. 60. The petitioner challenged the order dated 10.02.2018 passed

by the Tehsildar/Assistant Collector First Class, Udhampur. The appeal preferred by her was dismissed. It was noticed therein that the land stood released/allotted in favour of respondent No. 5 and that, the property being State land, the competent Revenue Authority was empowered to take proceedings for removal of unauthorized occupation therefrom.

06. Thereafter, on 30.12.2019, the petitioner instituted another civil suit, inter alia, seeking a declaration that the order dated 19.12.2019 passed by the Deputy Commissioner/District Collector, Udhampur, as Appellate Authority, was illegal and without jurisdiction. The learned Sub-Judge (Chief Judicial Magistrate), Udhampur, vide order dated 11.01.2020, rejected the plaint under Order VII Rule 11 of the Code of Civil Procedure. The Court held, inter alia, that an order passed by the Revenue Authority could not be called in question by instituting a civil suit, particularly when the Land Revenue Act provided a statutory mechanism for assailing such an order. Reference was also made to Section 139 of the Land Revenue Act excluding the jurisdiction of the Civil Court in matters falling within the domain of the Revenue Authorities.
07. The order rejecting the plaint was unsuccessfully challenged before the learned Principal District Judge, Udhampur. The petitioner thereafter preferred a Civil Second Appeal before this Court, which too came to be dismissed vide judgment dated 02.05.2025.
08. While dismissing the Civil Second Appeal, this Court observed, inter alia, that an order passed by a Revenue Officer could not be assailed before the Civil Court in the manner attempted by the petitioner. It was, however, observed that where a Civil Court adjudicates a matter having a bearing

upon proceedings before the Revenue Officer, a decree passed by the competent Civil Court would have its legal effect upon the rights of the parties. It was further noticed that Section 133(5) of the J&K Land Revenue Act does not contemplate a challenge before the Civil Court to an order passed by the Revenue Officer under the said provision.

09. Considerable emphasis has been laid by learned counsel for the petitioner upon the fact that the counter-claim preferred by respondent No. 5 in the civil proceedings continues to remain pending. The counter-claim seeks a decree of mandatory injunction directing the petitioner to vacate the land and deliver possession thereof to respondent No. 5. It is argued that, notwithstanding rejection of the petitioner's plaint, the counter-claim survives as an independent proceeding and any decree ultimately passed therein would govern the rights of the parties.
10. It is further urged that respondent No. 5, in its counter-claim, has itself proceeded on the premise that the occupation of the premises by the petitioner's husband was permissive. According to the petitioner, the dispute is, therefore, essentially one between a licensor and a licensee and cannot be converted into proceedings for removal of an unauthorized occupant under Section 133 of the Land Revenue Act. On this basis, it is contended that the impugned eviction order and consequential notice are without jurisdiction.
11. Respondent No. 5 has opposed the petition. Its case is that the petitioner's claim for injunction and her plea founded upon settled possession have already failed before the competent Courts. It is maintained that the petitioner's husband was merely engaged as a Watchman/Caretaker and his

occupation of the premises was permissive and co-terminus with the purpose for which such occupation had been allowed. According to respondent No. 5, neither the petitioner's husband nor the petitioner acquired any independent right, title or interest in the State land.

12. It is further contended that pendency of the counter-claim cannot denude the Revenue Authorities of their statutory power to protect and retrieve State property. Respondent No. 5 also asserts that the eviction proceedings have already been executed and possession of the State land has been secured. This assertion is disputed by learned counsel for the petitioner.
13. Having heard learned counsel for the parties and perused the record, the principal question that arises for consideration is whether the mere pendency of the counter-claim instituted by respondent No. 5 operates as a legal impediment against exercise of statutory powers by the competent Revenue Authority in respect of the State land in question. The answer, in the considered opinion of this Court, has to be in the negative.
14. There is no dispute as regards the character of the land. The land falling under Khasra No. 60 is State land which stands released/allotted in favour of respondent No. 5. Equally, there is no material on record demonstrating conferment of any proprietary, tenancy or other independent right in favour of the petitioner over the land in question. The very foundation of the petitioner's occupation traces itself to the engagement of her husband as a Chowkidar/Watchman by respondent No. 5.
15. The plea of permissive occupation does not advance the petitioner's case. Permissive occupation, by its very nature, does not create an indefeasible right to remain in possession after the permission or authority underlying

such occupation has ceased. More importantly, the petitioner cannot, merely by relying upon the origin of the possession being permissive, convert such occupation into a legally enforceable right against the State or prevent the competent authority from acting in accordance with law in relation to State property.

16. The earlier civil proceedings are also of significance. The petitioner's attempt to secure injunctive protection did not succeed. The interim protection granted to her was vacated and the challenge thereto failed in appeal. Her subsequent attempt to question the orders of the Revenue Authorities before the Civil Court also failed, with the plaint being rejected under Order VII Rule 11 CPC. The order of rejection survived the first appellate proceedings and the Civil Second Appeal before this Court.
17. The contention founded upon pendency of the counter-claim requires to be examined in this backdrop. It is undoubtedly correct that rejection of a plaint does not, by itself, necessarily result in termination of a counter-claim which is otherwise maintainable and survives for adjudication. In the present case, respondent No. 5's counter-claim seeking mandatory injunction is stated to be pending before the competent Civil Court.
18. The survival of the counter-claim, however, cannot be equated with the grant of an injunction restraining the statutory authorities from proceeding under the Land Revenue Act. No order passed by the Civil Court staying the exercise of statutory powers by the Revenue Authorities has been brought to the notice of this Court. Nor can the mere pendency of a claim for possession before the Civil Court be construed as creating, in favour of the petitioner, a substantive right to continue in occupation of State land.

19. The counter-claim and the proceedings undertaken by the Revenue Authorities operate in their respective fields. The former is required to be adjudicated by the Civil Court in accordance with law and on the basis of the pleadings and evidence before it. The latter emanate from statutory powers concerning State land. Unless interdicted by a competent forum or shown to be inherently without jurisdiction, the statutory authority cannot be prevented from exercising its powers merely because one of the parties has also invoked a civil remedy.
20. The observations made by this Court while dismissing the Civil Second Appeal on 02.05.2025 do not support the proposition canvassed by the petitioner. The observation that a decree passed by the competent Civil Court may have an overriding or governing effect upon the rights of the parties cannot be read to mean that mere pendency of a civil proceeding places all statutory action in abeyance. There is a clear distinction between a decree finally determining civil rights and a proceeding in which such rights are yet to be adjudicated.
21. In other words, a possible decree in futuro cannot be treated as though such a decree already exists. Until the counter-claim is adjudicated and an enforceable order or decree is passed therein, the petitioner cannot derive from its mere pendency a right to restrain proceedings otherwise competent under the Land Revenue Act.
22. The earlier direction passed by this Court in OWP No. 54/2018 also does not confer any substantive right upon the petitioner to remain indefinitely in possession. The direction was only that she should not be dispossessed except by following due process of law. Such an order protects against

extra-legal dispossession; it does not prohibit the competent authority from initiating and concluding proceedings authorized by law.

23. In the present case, the petitioner has specifically challenged an order passed by the Tehsildar (Assistant Collector First Class), Udhampur, followed by a consequential eviction notice. The very fact that proceedings have been initiated by the competent Revenue Authority under the statutory framework militates against the contention that the respondents have sought to dispossess the petitioner otherwise than by authority of law. The earlier order requiring adherence to due process cannot, therefore, be construed as an embargo upon such statutory proceedings.
24. Much has also been sought to be made of the dispute as to whether the impugned eviction proceedings have already been executed. Respondent No. 5 asserts that the petitioner has been evicted and possession secured, whereas the petitioner disputes this assertion. In the considered view of this Court, resolution of this disputed question of fact is not necessary for deciding the legality of the impugned action. The petitioner's challenge has to succeed or fail on the legality of the action complained of and not merely on the question whether its execution has been completed.
25. The jurisdiction of this Court under Article 226 of the Constitution is undoubtedly wide, but its exercise is discretionary. Interference with action taken by a statutory authority would ordinarily be warranted where the action is without jurisdiction, contrary to the governing statute, violative of principles of natural justice, or otherwise demonstrably arbitrary. No such infirmity has been established in the present case.

26. On the contrary, the material placed on record demonstrates that the petitioner's occupation originates from the engagement of her husband as a Chowkidar/Watchman; that the land is State land released/allotted in favour of respondent No. 5; that her claim to injunctive protection has previously failed; and that her attempt to assail the Revenue proceedings through a civil suit has also remained unsuccessful. The pendency of respondent No. 5's counter-claim does not alter the legal character of the land nor does it, by itself, create an enforceable right in favour of the petitioner to continue in occupation thereof.
27. This Court is, therefore, unable to accept the contentions that the impugned eviction order dated 18.05.2025 and consequential notice dated 31.05.2025 are rendered illegal merely because the counter-claim filed by respondent No. 5 remains pending before the Civil Court.
28. It is, however, clarified that nothing observed herein shall be construed as an adjudication on the merits of the counter-claim pending before the learned Sub-Judge (Chief Judicial Magistrate), Udhampur. The said counter-claim shall be considered and decided by the competent Court on its own merits and in accordance with law, uninfluenced by any observation made in the present order except to the extent of the issues specifically determined herein.
29. For the foregoing reasons, this Court finds no ground warranting interference with eviction order No. TUDR/OQ/2025-26/847-48 dated 18.05.2025 or consequential eviction notice No. MCU/2025-26/647-51 dated 31.05.2025 in exercise of writ jurisdiction.

30. The writ petition is, accordingly, ***dismissed***, along with all connected application(s). Interim direction(s), if any, shall stand vacated.

31. There shall be no order as to costs.

(Sanjay Parihar)
Judge

Jammu
27.07.2026
Renu

Whether the order is speaking: Yes

Whether the order is reportable: Yes

