

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

WP(C) No. 110/2025

Pronounced on 07.08.2026.

Uploaded on: 14.08.2026

**Bashir Ahmad Shah aged 56
years, S/o Abdul Rehman Shah
R/o Bemina, Housing Colony,
Srinagar**

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

Through: Mr. Zaffar Qadri, Advocate

Vs.

- 1. Union Territory of J&K
through Commissioner-cum-
Secretary to Govt. Revenue
Department, Civil Secretariat,
Srinagar/Jammu**
- 2. Srinagar Development
Authority through Vice
Chairman, Srinagar**
- 3. Secretary Srinagar
Development Authority,
Srinagar**
- 4. Director Land Management,
Srinagar Development
Authority, Srinagar**
- 5. Deputy Director Land
Management, Srinagar
Development Authority,
Srinagar**

...Respondent(s).

Through: None

CORAM:

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

JUDGEMENT

07.08.2026

- 1.** The case of the petitioner in nutshell is that he has been holding possession of the property bearing Plot No. 426, measuring 90 Ft. x 60 Ft., in Sector No. I/D of Bemina Barthana, Housing Colony, Srinagar (herein referred to as the "subject plot" for short). That the subject plot had earlier

been allotted by the respondent-SDA to one Showkat Ahmad Ashai S/o Syed-ud-din R/o Pather Masjid, Srinagar, in 1997. That after acquiring the subject plot from the said Showkat Ahmad Ashai i.e., the recorded lessee, he under the bona fide belief of getting the leasehold rights vis-à-vis the same transferred in his favour under the rules, approached the respondents and fulfilled all the requisite formalities for transfer of the subject plot from the name of the said original allottee in his favour. That he also executed an indemnity bond in the year 2014 as per the directions of the respondents, besides complying with other formalities, including the payment of fees. That, however, to his bad luck, the respondents, instead of transferring the subject plot in his name, started harassing him by issuance of notices/orders for sealing of the construction on the same. That he was constrained to assail the said notices/orders before the learned Jammu & Kashmir Special Tribunal, Srinagar, and the learned Tribunal was pleased to set aside the same. That even after passing of the decision by the learned J&K Special Tribunal, he approached the respondents-SDA with the request for transferring the subject plot in his name, but they are reluctant to do the needful. That he also got information by invoking the provisions of the Right to Information Act, which revealed that the respondents have already transferred the leasehold rights in respect of as many as 216 properties/plots during the years 2003 to 2023. That the original allottee, Showkat Ahmad Ashai, had already obtained building permission from the respondents/SDA for construction of a residential house on the subject plot. That the said original allottee had also obtained

another building permission for construction of guest rooms over the existing ground floor.

That, in response to his application for transfer of leasehold rights from the original allottee in his favour, the respondents forwarded a communication to its Law Officer for his opinion, who, upon perusal of the documents produced by him (petitioner), recommended the approval of the issuance of a public notice for inviting objections from the general public in respect of his prayer for transfer of leasehold rights. That the field agency of the respondents, i.e., the concerned Girdawar and Patwari, upon spot verification, reported that he, i.e., the petitioner, and his wife are residing in the residential house constructed on the subject plot.

That a public notice also came to be issued inviting objections in the process of his case, and he was under a bona fide belief that his case was being legally processed, but unfortunately, the respondents issued a sealing notice/order dated 18.11.2020, wherein his building on the subject plot came to be sealed. That the learned Special Tribunal, Srinagar, disposed of his appeal vide order dated 14.02.2023 by setting aside the impugned sealing order and directing the desealing of the structure. However, it is needful to mention that the learned Special Tribunal, inter alia, observed in its judgment dated 14.02.2023 that since he, i.e., the petitioner (appellant therein), has admitted that he has made some deviations while constructing the offending structure, the respondents are put at liberty to proceed under the norms provided in the recently framed Building Bye-Laws under the name and style of J&K Unified Building

Bye-Laws, 2021. That thereafter, he again approached the respondents-SDA with the request for transferring the subject plot in his name, but in vain.

That the inaction on the part of the respondents in not transferring the subject plot in his name is illegal, unlawful and unjustified. That his case is being dealt with arbitrarily and altogether on different pretexts. That the respondents have failed to perform their statutory duty, as, since 2014, they are not passing the appropriate orders on his application, complete in all respects, regarding the transfer of leasehold rights in respect of the subject plot in his name. That the possession of the subject plot has been continuously with him since the original allottee parted with the same in his favour, and he has been residing in the house constructed thereon along with his family and has also been running his commercial activities on a portion of the property, for which the original allottee had already acquired the proper permission.

That he has not filed any other writ petition, suit or any other proceeding in respect of the subject matter before any other court of law. That he has got no other efficacious, speedy and alternative remedy available except approaching this Court with the instant writ petition.

2. The petitioner has accordingly sought issuance of the following writs/directions/orders in the matter:

a. Mandamus: Commanding respondents to transfer the property bearing plot No.426 of 90 ft X 60 ft situated in Sector No.I/D Bemina Barthana, Housing Colony, Srinagar, from the name of original allottee to the name of petitioner, as has been allotted by

respondents in respect of similarly situated persons as per the Annexure-VI.

b. Mandamus: Commanding respondents not to cause any kind of interference into the peaceful possession, occupation and enjoyment of the petitioner over the property bearing plot No.426 of 90 ft X 60 ft situated in Sector No.I/D Bemina Barthana, Housing Colony, Srinagar.

c. The Hon'ble Court may also pass any other order, relief or direction as it may deem fit and proper under the facts and circumstances of the case may also be passed in favour of petitioner and against the respondents.

3. The respondents, despite service of notices upon them, did not choose to appear and contest the case, which led to the initiation of *ex parte* proceedings against them in the ends of justice.
4. The Court has heard the learned counsel for the petitioner in respect of the matter, who reiterated the stand already taken in the writ petition.
5. The Court has perused the record of the instant petition, especially the copies of documents enclosed with it, including the order dated 14.02.2023 passed by the learned Jammu and Kashmir Special Tribunal, Srinagar, in the appeal filed by the petitioner and his wife, namely Tasleema, impugning the sealing order dated 18.11.2020 issued by respondent No. 3.
6. The case of the petitioner, as projected through the medium of the instant writ petition, has remained unrebutted during the proceedings. The copies of the documents forming annexures to the writ petition lend support to the averments made in the petition and the contentions advanced during arguments. The petitioner, after obtaining permissive possession of the subject plot from its original allottee, approached the respondents-SDA for

transfer of the leasehold rights in respect of the subject plot in his favour under the rules. The case of the petitioner is that his application with such prayer was processed in the offices of the respondents and is still pending consideration. The petitioner's case, as hereinbefore mentioned in detail, is that he fulfilled all the formalities as per the directions of the respondents, but unfortunately, the respondents slept over the case while discriminating against him in comparison to hundreds of similarly situated applicants whose cases for transfer of leasehold rights were processed and allowed, as is evident from the information which he got by invoking the provisions of the Right to Information Act.

7. A copy of the order dated 14.02.2023 passed by the learned Jammu and Kashmir Special Tribunal, Srinagar, while disposing of his appeal against the sealing notice/order dated 18.11.2020 of respondent No. 3, while setting aside the impugned sealing order and directing the desealing of the structure forthwith, has, inter alia, kept the respondents at liberty to proceed under the norms provided in the recently framed Building Bye-Laws under the name and style of J&K Unified Building Bye-Laws, 2021, in respect of the deviations himself admitted by the petitioner to have inevitably crept in under architectural advice.
8. It is profitable to reproduce the operative part of the judgment dated 14.02.2023 of the learned Jammu and Kashmir Special Tribunal, Srinagar, as under:

“In these rival contentions of the parties, the moot question for the determination of this forum arises that whether the respondents

have powers under the COBA Act 1988 to seal the structure on the basis of its deviations from the original plan and use of building. Certainly there is no such provision of law under the COBO Act or the bye laws governing the field which shall empower the respondents to put the structure under seal on the grounds that the same has been constructed in deviations with the sanctioned plan/building permission. As far as the use of building is concerned, the claim of the respondents is that the allottee/ permittee was given building permission for residential purposes, however he has changed the use of building and started the commercial activity therein. This claim of the respondents is not tangible. The record is suggestive of the fact that though initially the building permission was granted for construction of ground floor for residential purposes, however subsequently in terms of building permission order no SDA/STP/222 of 2011 dated 28 12 2011 the permittee/appellant was authorized for construction of the guest rooms over the existing ground floor which certainly is a commercial activity itself. Once respondents have themselves permitted the structure for commercial activity by way of written permission they cannot claim that the appellant is running commercial activity in a residential house. Accordingly, the structure cannot be sealed on this count. Therefore, the impugned sealing order is set aside and the respondents are directed to de seal the structure forthwith.

However the appellant has admitted in his appeal that he has made some deviations while constructing the offending structure, the respondents are put at liberty to proceed under the norms provided in recently framed building bye laws under the name and style of J&K Unified Building Bye Laws, 2021.

Disposed of Record be remitted back to the authorities before consigning the case file to records.”

9. The learned counsel for the petitioner during his arguments inter alia submitted that pursuant to order dated 14.02.2023 of the learned Jammu and Kashmir Special Tribunal, Srinagar, he approached the respondents/SDA with the request for compounding of the deviations in

accordance with the Unified Building Bylaws of 2021 as directed by the learned Tribunal but they are yet to do the same also.

10. The perusal of the minutes of the proceedings on the instant petition reveals that the respondents did not choose to appear and contest the proceedings despite service of notices upon them, as is evident from the Registry's note dated 03.02.2025, revealing that the registered notices were issued to respondents 1 to 5 under No. 1367-71 dated 22.01.2025. The Registry has placed on record the tracking reports of the individual notices, which reveal that notices were served upon the respondents on 23.01.2025, 24.01.2025 and 27.01.2025. It has remained unrebutted during the proceedings of this petition that the petitioner has been continuously and without any interruption in possession of the subject property prior to 2014, when he acquired the permissive possession of the same from the original allottee under a bona fide intention of getting the leasehold rights in respect of the same transferred in his name from the respondents under the rules. As hereinbefore mentioned, the copies of the documents placed on record, viz., indemnity bond, field agency reports, official correspondences of his application, public notice, fee receipts, clearly reveal that the petitioner, in a bona fide manner, applied to the respondents for transfer of the subject plot in his favour and his case was duly processed but not concluded. It is also borne out from the record, as hereinbefore mentioned, that the respondents have also issued a sealing notice/order in respect of the structure existing on the subject plot, which was assailed by him in an appeal before the learned Special Tribunal, Srinagar, and he succeeded in setting aside the same. The petitioner has

been in continuous and uninterrupted possession of the subject plot for about 15 years, and he has been residing and also running his commercial activities in the structures constructed on the subject plot in pursuance of the building permissions that had been obtained by the original allottee. It is also the case of the petitioner that he got information under the Right to Information Act to the effect that the respondents-SDA allowed the transfer of the leasehold rights from the original allottees to the bona fide sub-lessees in 216 cases during the years 2003 to 2023. It is understood that the petitioner may be facing difficulties and hardships in exercising his rights vis-à-vis the subject plot for want of proper legal title. The right to life guaranteed under Article 21 of the Constitution of India has manifold facets and is intended to protect the petitioner and his family, who have been residing in the structures existing on the subject plot and carrying their commercial activities also on a portion of the same in connection with their livelihood.

11.For the foregoing discussion, the instant writ petition is allowed with the issuance of the following writs/directions in the nature of mandamus:

- i. The respondents 2 to 5 are directed to transfer the leasehold rights in respect of the subject plot bearing No. 426, measuring 90 Ft. x 60 Ft., in Sector No. I/D of Bemina Barthana, Housing Colony, Srinagar, from the original allottee, namely, Showkat Ahmad Ashai S/o Syed-ud-din R/o Pather Masjid, Srinagar, in favour of the petitioner, namely, Bashir Ahmad Shah S/o Abdul Rehman Shah R/o

Bemina, Housing Colony, Srinagar, subject to fulfilment of all requisite formalities, including payment of fee, if not already complied with. The respondents shall do the needful notwithstanding any dispensation of any practice in respect of transfer of leasehold rights, as an exceptional case.

- ii. The respondents are directed to comply with the judgment/order of the learned Jammu and Kashmir Special Tribunal, Srinagar, while dealing with the deviations that had come into existence during the construction of the structure existing on the subject plot, if not already done.

12. The respondents shall do the needful within a period of six weeks from the date copies of this judgment are left at their offices for their information and compliance.

13. Disposed of.

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR

07.08.2026

Mubashir

Whether the judgment is speaking: Yes

Whether the judgment is reportable: Yes