

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

CM(M) 119/2023 CM(3509/2023)

MOHAMMAD SHAFI ZAHARA AND ANOTHER

...Petitioner(s)

Through: Mr. Zahid Khan, Advocate.

Vs.

MS. KHALIDA ALIAS KHATI

...Respondent(s)

Through: Mr. Ahmad Javid, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJNESH OSWAL, JUDGE

ORDER

06.10.2026

1. The petitioners have filed this petition for quashing the order dated 30.05.2023 passed by the court of Civil Judge Jr. Division/Munsiff Chadoora [for short 'the Trial Court'] in an application filed by the respondent for clarification of order dated 06.10.2022.
2. In terms of the order impugned, the learned Trial Court, after taking note of the report of the Tehsildar Chadoora, has directed the petitioner No. 2 to demolish the portion of constructed residence, which is admittedly falling under Survey No. 421, by exercising suo-moto power.
3. The sole grievance of the petitioners is that impugned order has been passed without affording any opportunity of hearing to the petitioners.
4. Mr. Zahid Khan, learned counsel for the petitioners, has submitted that the Trial Court ought not to have straightway directed the petitioner No.2 to demolish the alleged unauthorized construction, solely on the basis of report of Tehsildar Chadoora.
5. Per contra, learned counsel for the respondents has submitted that petitioner No. 2 was permitted to construct residential house over the piece of land measuring not more than 6 marlas of land comprising under Survey No. 422, situated at village Gowharpora, whereas, the petitioner No. 2, in utter disregard of the order dated 06.10.2022, had raised part construction on the land comprising under Survey No. 421,

situated at Gowharpora, as such, he submits that once the petitioner has violated order passed by the learned Trial Court, the learned Trial Court has rightly directed the demolition of unauthorized construction raised by the petitioner No. 2.

6. Heard and perused the record.
7. The sole contention raised by the petitioners is that learned Trial Court has not afforded any opportunity of hearing to the petitioners. In fact, order dated 09.11.2022 passed by the learned Trial Court, reveals that with the consent of the parties, Tehsildar Chadoora, was directed to visit on spot and file a status-report as to whether the construction had been raised by the petitioners on Survey No. 421 or 422. It was after the receipt of the report of the Tehsildar Chadoora, order impugned dated 30.05.2023, came to be passed by the learned Trial Court. The learned Trial Court has simply proceeded to pass the impugned order after receipt of the report of the Tehsildar Chadoora without granting opportunity of hearing to the petitioners.
8. In view of above, I am of the considered view that the order dated 30.05.2023 to the extent of directing the petitioner No. 2 to demolish the alleged un-authorized construction is required to be kept in abeyance and the petitioners are granted liberty to submit their claim/case before the learned Trial Court and thereafter the learned Trial Court shall be at liberty to implement the order impugned to the extent as mentioned above or to alter the same in the facts and circumstances of the case, but at the same time petitioner No.2 cannot be allowed to raise any further construction in violation of order dated 06.10.2022.
9. The petition is disposed of in the above terms.

(RAJNESH OSWAL)
JUDGE

SRINAGAR
06.10.2026
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