

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

**CM (M) No. 416/2026
CM No. 6274/2026
Caveat No. 2288/2026**

1. Abdul Majeed Mir (65 Years)

S/O Ghulam Mohidin Mir
R/O Tikkipora, Lolab,
District Kupwara.

2. Ghulam Mohammad Mir
S/O Ghulam Mohidin Mir
R/O Sever Thandipora,
District Kupwara

3. Mohammad Amin Mir (35 Years)
S/O Ghulam Mohidin Mir
R/O Sever Thandipora,
District Kupwara

4. Mohammad Majnoon Mir (59 Years)
S/O Ghulam Mohidin Mir
R/O Sever Thandipora,
District Kupwara

5. Nazir Ahmad Mir (50 Years)
S/O Ghulam Mohidin Mir
R/O Sever Thandipora,
District Kupwara

6. Habli Begum (62 Years)
W/O Mohammad Ashraf Mir
D/O Late Ghulam Mohiudin Mir
R/O Sever Thandipora,
District Kupwara

7. Haneefa Begum (65 Years)
W/O Abdul Jabbar Mir
D/O Ghulam Mohidin Mir
R/O Tikkipora Lolab,
District Kupwara

8. Atiq Begum (40 Years)
W/O Sonallah Sheikh
D/O Ghulam Mohidin Mir
R/O Sever Thandipora,
District Kupwara
9. Rafeeqa Begum (37 Years)
W/O Ghulam Hassan Bhat
D/O Ghulam Mohidin Mir
R/O Warnow, District Kupwara.

... Petitioner(s)

Through: -

Ms Syed Ainain Qadiri, Advocate.

V/s

1. **Ghulam Rasool Mir,**
S/O Abdul Gaffar Mir
R/O Sever Thandipora, Lalpur,
District Kupwara.
2. Sub-Divisional Magistrate,
Lolab Sogam, Kupwara.
3. Tehsildar, Lalpur,
District Kupwara.
4. Naib Tehsildar, Khurhama Lolab,
District Kupwara.

... Respondent(s)

Through: -

Mr Sami Sabir Lone, Advocate for the Caveator/ R-1.

CORAM:

HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(ORDER)

16.09.2026

Caveat No. 2288/2026:

01. With the appearance of Mr Sami Sabir Lone, Advocate, on behalf of the Caveator/ Respondent No.1, Caveat No. 2288/2026 shall stand **discharged**, accordingly.

CM (M) No. 416/2026; CM No. 6274/2026:

02. The Petitioners, through the medium of this Petition invoking supervisory jurisdiction of this Court vested under Article 227 of the Constitution of India, have assailed the legality of Order dated 8th of September, 2026 passed by the learned Principal District and Sessions

Judge, Kupwara in a Revision Petition titled “**Ab. Majeed Mir & Ors. v. Gh. Rasool Mir & Ors.**”, whereby the said Revision Petition was dismissed.

03. The Petitioners have pleaded that the Respondent No.1 herein moved an application before the Sub-Divisional Magistrate Lolab, Sogam against the Petitioners herein seeking action with regard to alleged loss to his proprietary land by the over-spreading branches of a Walnut tree of the Petitioners herein; that the Sub-Divisional Magistrate, Lolab, Sogam, vide communication No. SDM/Reader/25/977-978 dated 25th of November, 2025, advised the Tehsildar, Lalpora to proceed in the matter invoking Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [BNSS] to avoid any threat to loss of life and property in future, after completion of required formalities; that this communication dated 25th of November, 2025 was challenged by the Petitioner in Revision Petition before the Revisional Court, however, the same came to be dismissed vide the impugned Order.

04. The impugned Order has been assailed by the Petitioners, on the ground that the walnut tree, being a specified tree under the Jammu & Kashmir Preservation of Specified Trees Act, 1969 (for short “the Act of 1969”) and the Rules framed thereunder, the learned Revisional Court has misdirected itself by upholding the communication dated 25th of November, 2025 issued by the Sub-Divisional Magistrate, Lolab, Sogam, observing that the SDM, while directing the Tehsildar concerned to proceed ahead after completion of due required formalities, has made it clear that the matter has to be processed in accordance with law, as such, the impugned Order does not call for any interference and dismissed the Revision Petition on a wrong notion.

05. Learned Counsel appearing for the Petitioners, while referring to the provisions of the Act of 1969, submits that the essential dispute between the parties is with regard to a standing green walnut tree on the boundary of the landed properties of the Petitioners and the Respondent No.1 herein, whose branches are spread over on both sides and that the Respondent No.1, being aggrieved of the three branches of the said tree over his land, had approached the concerned Sub-Divisional Magistrate to

seek compensation in the matter, but the SDM, instead of redressing the grievance for compensation, had forwarded the complaint to the local Tehsildar to invoke the jurisdiction vested in him as an Executive Magistrate under Section 152 of the BNSS for removing the nuisance.

06. Learned Counsel has further argued that, in case this Order of the SDM is carried out, the same will be in the teeth of the Act of 1969 and the Rules framed thereunder, besides being detrimental to the rights and interests of the Petitioners, who is the owner of the walnut tree in question. She further contended that the legal recourse is to seek permission from the competent authority for felling of a walnut tree or even chopping of its branches and that the competent authority under the Act and the Rules is the Divisional Commissioner of the concerned Division, as such, the Magistrate cannot proceed under Section 152 of the BNSS to remove the nuisance, even if found due to this specified tree, without invoking the provisions of the specific Act on the subject.

07. Mr Sami Sabir Lone, learned Advocate, appearing on behalf of the Respondent No.1, submits that the land of the Respondent No.1 in the area where the walnut tree is situated had been acquired by the Government for a Lavatory and that the branches of the said walnut tree are spread over that area, including the land of the Respondent No.1 herein, thereby causing damage to his land. He, however, submits that the Petitioners had approached this Court against the communication of the SDM by filing WP (C) No. 3096/2025 earlier, which had been disposed of by this Court on 9th of December, 2025, directing Tehsildar, Lalpora to proceed in accordance with law in terms of Order dated 25th of November, 2025, after affording an opportunity of being heard to the rival sides, but, without waiting for the compliance of the aforesaid Order passed by this Court on part of the Tehsildar concerned, the Petitioners had chosen to file a Revision Petition against the same Order passed by the SDM concerned before the Revisional Court, suppressing the fact that this Order had already been challenged before this Court in a Writ Petition.

08. Learned Counsel pleads that even the Revisional Court had disposed of the matter observing that the SDM, while directing the

concerned Tehsildar to proceed ahead after completion of due required formalities, has made it clear that the matter has to be processed in accordance with law, as such, there was no illegality either in the Order passed by the SDM or even by the Revisional Court. He has, finally, prayed that the present Petition be dismissed.

09. Heard and considered.

10. It appears that the whole of the controversy involved in the case revolves around a walnut tree which is a specified tree on the boundary of the landed property of both the contesting parties, whose branches are spread over property of both sides. The Respondent No.1 herein may have been complaining of the damage to his landed property due to the branches of the walnut tree, which is the property of the Petitioners herein, and, in that direction, he had moved to the Sub-Divisional Magistrate Lolab, Sogam, with an application seeking protection of his property, who, in turn, directed the local Tehsildar to proceed in the matter in accordance with law.

11. Before the Tehsildar could proceed in the matter, the Petitioners herein, firstly, approached this Court by way of Writ Petition WP (C) No. 3096/2025, which was disposed of vide Order dated 9th of December, 2025, directing the Tehsildar concerned to proceed in the matter in accordance with law after hearing the rival parties.

12. Not having been contended with the aforesaid direction from this Court, the Petitioners, thereafter, invoked the revisional jurisdiction of the Revisional Court seeking setting aside of the Order passed by the SDM, however, the Revisional Court did not find favour with the Petitioners and dismissed the Revision filed by the Petitioners, thereby upholding the Order passed by the SDM.

13. On perusal of the Order impugned passed by the Revisional Court, there seems to be no illegality or perversity in the said Order which may warrant any interference by this Court under supervisory jurisdiction. The Revisional Court has rightly observed that if the Executive Magistrate, after verification, forwards the matter/ report to the Deputy Commissioner and the matter is thereafter processed for obtaining the requisite permission

from the prescribed authority, such a course would be well within the ambit and powers of the Executive Magistrate.

14. Viewed thus, this Petition is **disposed** of with a direction to the Tehsildar concerned, who is stated to be seized of the matter, to deal with the walnut tree, which is the bone of contention between the parties, having regard to the provisions of the Jammu & Kashmir Preservation of Specified Trees Act, 1969 and the Rules framed thereunder.

15. Petition is thus, **disposed** of on the above terms, along with the connected CM.

SRINAGAR

September 16th, 2026

"TAHIR"



(M. A. CHOWDHARY)
JUDGE