

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

WP(C) No. 2626/2021

CM No. 8232/2021

c/w

WP(C) No. 2521/2021

WP(C) No. 2662/2021

Haseena Begum

...Appellant/Petitioner(s)

Through: Mr. Mujeeb Andrabi, Advocate

Vs.

Union Territory of J&K and Ors.

...Respondent(s)

Through: Mr. Illyas Nazir Laway, GA

CORAM:

HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

ORDER

07.09.2026

- 1.** Having heard the counsel for the parties and upon consideration of the material placed on record, this Court finds that the impugned action cannot be sustained in its present form.
- 2.** It is not in dispute that each of the three petitioners had exchanged 10 marlas of proprietary land falling under Survey No. 1176 with an equivalent extent of Kachahri land pursuant to the order dated 11.12.2010. The respondents themselves acknowledge that, in aggregate, land measuring 1 kanal and 10 marlas stood exchanged in favour of the three petitioners. Mutation pursuant to such exchange was also attested.
- 3.** In the face of this admitted position, the allegation contained in the impugned notice that the petitioners are in unauthorized occupation of the entire land measuring 4 kanals and 9 marlas cannot be

accepted without first identifying and demarcating the land lawfully held by the petitioners and the land, if any, found to be under unauthorized occupation.

4. The respondents contend that the petitioners are in excess possession of land measuring 2 kanals and 19 marlas which, according to the revenue record, continues to be recorded as Kachahri land. Even if the said assertion is assumed, for the sake of argument, to be correct, the respondents could not have proceeded to direct removal of the alleged encroachment merely on the basis of such assumption. The factual position on the spot was required to be ascertained and the precise extent and identity of the alleged encroachment determined before coercive action could be initiated.

5. The matter assumes further significance in view of the admitted fact that there were three separate exchanges of 10 marlas each, whereas the impugned action proceeded without properly accounting for the individual exchanges. The petitioners have also placed reliance upon the permissions pursuant to which residential houses were raised upon the exchanged land. These circumstances necessarily required the competent authority to examine the revenue record as well as the actual position obtaining on the spot before arriving at any conclusion regarding unauthorized occupation.

6. An administrative or quasi-judicial authority exercising statutory power which entails serious civil consequences is required to proceed upon ascertainment of relevant facts and after affording the affected persons a reasonable opportunity of being heard. A conclusion founded upon an unverified assumption, particularly

where material facts stand admitted by the authority itself, cannot form a valid foundation for coercive action.

7. The availability of an appellate remedy before the Divisional Commissioner would ordinarily require an aggrieved person to avail such statutory remedy. However, existence of an alternative remedy does not operate as an absolute bar to exercise of writ jurisdiction where the impugned action is shown to have been taken in violation of the principles of natural justice, without proper application of mind, or without jurisdiction.
8. In the present case, the respondents proceeded against the petitioners without first determining the actual extent of land lawfully held pursuant to the sanctioned exchanges and without adequately ascertaining the alleged excess occupation on the spot. The petitioners were also not afforded a reasonable opportunity of being heard before the impugned action was taken. The proceedings, therefore, suffer from non-application of mind as well as violation of the principles of natural justice. For the foregoing reasons, all the three petitions are allowed and the impugned notice is quashed.
9. It is, however, made clear that quashing of the impugned notice shall not preclude the respondents from proceeding afresh against the petitioners, should circumstances so warrant. Any such proceedings shall be undertaken strictly in accordance with law, after verification and demarcation of the land in question, due consideration of the sanctioned exchanges and the relevant revenue record, and after affording a reasonable and effective opportunity of hearing to all the three petitioners. No opinion is expressed on the merits of the respondents' allegation regarding unauthorized occupation of the

remaining Kachahri land, and the respondents shall be at liberty to determine the same independently, on the basis of the record and the factual position obtaining on the spot.

(SANJAY PARIHAR)
JUDGE

SRINAGAR
07.09.2026
Shabroz

Whether the order is speaking: **Yes/No**

Whether the order is reportable: **Yes/No**

