

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

LPA No. 270/2025

Reserved on: 09.04.2026

Pronounced on: 29.04.2026

Uploaded on: 29.04.2026

Whether the operative part or full
judgment is pronounced: *Full*

Inhabitants of Block Harwan through

1. Ali Mohammad Rather, Aged 74 years
S/o Mohammad Ismail Rather,
R/o New Theed, Harwan.
2. Mehraj-ud-din Rishi, Aged 33 years
S/o Ghulam Mohammad Rishi
R/o Dara, Harwan, Srinagar.
3. Abdul Rashid Bhajran, Aged 58 years
S/o Dilawar Bhajran
R/o Fakirguri, Dardakhowar, Harwan,
Srinagar.
4. Irfan Ahmad Mir, Age 32 years
S/o Mohammad Ramzan Mir,
R/o Murinder Bagh, Gandtal, Harwan,
Srinagar.
5. Ali Mohammad Bhat, Age 36 years,
S/o Ghulam Hassan Bhat,
R/o Barji, Mufti Bagh, Harwan, Srinagar.
6. Ghulam Mohammad Bhat, Age 62 years, ...Petitioner(s)/Appellant(s)
S/o Mohammad Kamal Bhat,
R/o Mufti Bagh, Gandtal, Harwan, Srinagar.

Through: Mr. Salih Pirzada, Adv.

Vs.

1. Union Territory of JK through
Commissioner/Secretary, Revenue Department,
Civil Secretariat, Jammu/Srinagar.
2. Department of Rural Development & Panchayati
Raj through Administrative Secretary Civil
Secretariat, Jammu/Srinagar
3. Divisional Commissioner, Kashmir, Srinagar
Tankipora, Srinagar.
4. Deputy Commissioner, Srinagar

5. J&K Lakes Conservation & Management
Authority, through its Vice-Chairman
Gupt Ganga, Ishber Nishat.

6. Enforcement Officer,
J&K Lakes Conservation & Management
Authority Gupt Ganga, Ishber Nishat.

...Respondent(s)

Through: Mr. Furqan Yaqub, GA.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Per Sanjeev Kumar: J

1. This appeal under Clause 12 of Letters Patent of this Court arises from an order and judgement dated 17th of October 2025 passed by the learned Single Judge of this Court [“the Writ Court”] in WP (C) No. 688/2025 titled Inhabitants of Block Harwan vs. Union Territory of J&K & Ors. whereby the Writ Court has dismissed the writ petition filed by the appellants seeking a declaration that J&K Lakes Conservation and Management Authority [“LCMA”] lacks jurisdiction over Block Harwan (Halqa Fakirgujri A&B, Gandtal, Syedpora, Theed A&B and Dara A&B).

2. Briefly stated, the facts leading to the filing of this appeal are that the appellants belong to various Panchayat Halqas of Block Harwan and are aggrieved of the extension of jurisdiction of LCMA over their villages. They are also aggrieved of the notices dated 15th of March 2025, 17th of March 2025 and 19th of March 2025, and the orders issued under Section 7 of the J&K Control of Building Operation Act, 1998 [“the Act of 1998”]. The appellants hold the view that in view of their Villages and Panchayat Halqas being governed by the Panchayati Raj Act, 1989, are not amenable to the

jurisdiction of LCMA and that the issuance of notices interfering with the construction raised by the people in the said villages, are without jurisdiction. They raised this grievance in WP (C) No. 688/2025. It was pleaded by the appellants in their writ petition that they being governed by the provisions of Panchayati Raj Act 1989 [“the Act of 1989”], were granted building permissions under Section 12 (iv) of the Act of 1989 read with Rule 155 of the Panchayati Raj Rules by the competent authority designated in terms of Government Order No. 11-RD & PR of 2022 dated 22nd of January 2022.

3. The LCMA, without any lawful authority and jurisdiction, issued notices for demolition of the structures on the ground that the area of Block Harwan is part of notified area and falls within its jurisdiction, and, therefore, no construction can be raised in the notified area of LCMA without seeking building permission from the competent authority under the Act of 1988. In a nutshell, it was the plea of the appellants herein that with the coming into force of Panchayati Raj Act, 1989 and inclusion of Block Harwan thereunder, the LCMA, or for that matter any other municipal or local authority, ceased to have jurisdiction.

4. The writ petition was contested by the respondents, who in their reply affidavit, pleaded that the areas regarding which the notices stood issued to some of the villagers of Block Harwan in respect of raising of illegal and unauthorized constructions, fall within the notified area for which LCMA Srinagar has been constituted. It was pleaded that “J&K Lakes and Waterways Development Authority”, now named as “Jammu and Kashmir Lakes Conservation and Management Authority” was constituted vide SRO

109 dated 27th of March 1997 for the local areas specified in Annexure-A to the said notification.

5. In the year 1999, by issuance of another SRO i.e., SRO 57 dated 10th of February 1999, Annexure-A of SRO 109 was substituted by Annexure-A & B of SRO 57 of 1999, whereunder local areas of jurisdiction of LCMA was defined. It was thus pleaded that CD Block Harwan consisting of various villages like Dara, Faqirgujri, Khimber, Theed, etc. were brought within the jurisdiction of LCMA. It was thus pleaded that LCMA has been constituted to regulate development and construction and operates as Control of Building Operation Authority within its delineated local area. The Enforcement Wing of the authority supervises and monitors to ensure that only permitted/sanctioned construction in the notified area of LCMA are carried out. Besides, it restrains/prevents coming up of illegal and unauthorized construction.

6. The Writ Court, having considered the rival contentions and perused the relevant provisions of the legislations under discussion, came to the conclusion that the villages of the appellants falling in Block Harwan fall within the notified area of LCMA in terms of SRO 57 of 1998, and that in terms of Government Order dated 1st April 2022, the areas within the jurisdiction of Tourism Development Authority or any other Authority empowered under any other Act or law stand excluded from the ambit of Government Order dated 22nd of January 2022 which was strongly relied upon by the appellants. The Writ Court also took note of the fact that the notices of demolition of unauthorized constructions were issued only to the alleged violators who were not before the court. The court found the writ petition filed by the appellants not maintainable at the instance of those who

had no locus to challenge such notices. The writ petition was thus dismissed by the Writ Court in terms of the judgement impugned primarily on two counts:

(1) that the appellants had no locus standi to challenge the notices issued by the competent authority under Section 7(1) of the Act of 1988, and;

(2) that the areas/villages to which the appellants belong clearly fall within the jurisdiction of LCMA.

7. The appellants are aggrieved of the judgement passed by the Writ Court and seek to challenge the same *inter alia* on the following grounds:

(1) that the Writ Court has failed to address the primary question raised in the writ petition i.e., challenge to the jurisdiction of LCMA to issue notices of demolition under the Act of 1988 on the ground that after the promulgation of the Panchayati Raj Act of 1989 and the declaration of the areas inhabited by the appellants as Halqas and Block, the LCMA ceased to have jurisdiction and control over such areas.

(2) that the Writ Court erroneously proceeded to dismiss the writ petition on the ground that building permissions issued by the authority under the Panchayati Raj Act, and the demolition notices impugned in the writ petition did not pertain to the appellants. The Writ Court ignored the fact that the writ petition was one filed in the representative capacity.

8. Having heard learned counsel for the parties and perused the record, following questions arise for determination:

- (1) whether the constructions and reconstructions in the villages/Panchayat Halqas of Block Harwan fall within the jurisdiction and regulatory control of LCMA or would be governed and regulated under the Panchayati Raj Act, 1989 and the rules framed thereunder?
- (2) Whether the appellants were entitled in law to file a writ in the representative capacity to throw challenge to orders of demolition issued by the Control of Building Operation Authority under Section 7 of the Act of 1988 to individuals by name?

9. The decision of the issues raised in this petition, would turn on the inter-play of various legislations, in particular the Panchayati Raj Act, 1989, the Development Act, 1970 with regard to the areas constituting Block Harwan of Tehsil and District Srinagar.

10. The plea of the appellants, who claim to be the inhabitants of different villages/ Panchayat Halqas of Block Harwan is that with coming into force of the Panchayati Raj Act, 1989 and constitution of various Panchayat Halqas of Block Harwan, the jurisdiction of all other authorities including LCMA stands excluded and, therefore, it is only the authority constituted under the Panchayati Raj Act and the rules framed thereunder, which alone has the jurisdiction to regulate constructions and reconstructions in Block Harwan.

11. The J&K Development Act 1970 was enacted by the State Legislature with a view to providing for development of the State according to plan and for matters ancillary thereto. The Act came into force w.e.f. 31st of October 1970, i.e., the date when its enforcement was notified in the Government Gazette.

12. As per the statement of objects and reasons of this legislation, the Act is intended to secure the development of State in a planned manner and to check haphazard constructions by regulating building activities in the State. The Act *inter alia* envisages the constitution of a corporate body known as Development Authority for purposes of preparing a master plan for an area to be declared by the Government as local area and zonal development plans for the zones in which such a local area may be divided.

13. Section 3 of the Development Act empowers the Government to declare any area to be “local area” for the purposes of this Act by issuing a notification in the Government Gazette and also to constitute for such local area an authority to be called as “Development Authority”. Vide SRO 109 dated 27th of March 1997, the Government declared certain areas specified in Annexure-A to the said SRO to be the local area for the purposes of the Development Act of 1970 and also constituted therefor an authority to be known as “J&K Lakes and Waterways Development Authority” which is now known as “J&K Lakes Conservation and Management Authority”.

14. By virtue of subsequent SRO i.e., SRO 57, the limits of local area were changed and Annexure-A appended with SRO 109 of 1997 was substituted by Annexure-A & B of SRO 57.

15. Indisputably, the entire area of Harwan Block including the villages to which the appellants belong came to be notified as ‘Notified Area’ for the purposes of development of 1970 and were put under the control of LCMA, an authority constituted for the said notified area. The Development Act of 1970 contains elaborate provisions for regulating the plan development. Section 6 of the Development Act denotes the objects of the authority and it reads thus:

6. Objects of the Authority. The objects of the Authority shall be to promote and secure the development of the local area for which it is constituted, according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering and other operations, to execute works in connection with supply of water and electricity, disposal of sewerage and other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:

Provided that save as otherwise provided in this Act, nothing contained in this Act shall be constructed as authorizing the disregard by the Authority of any law for the time being in force.

16. Section 30 of CHAPTER-V of the Development Act 1970 deals with permission to be taken for development within the notified area and provides that once a notice approving the date of operation of the plan published under Section 11 has been issued, no person shall undertake or carry out development of any land or building in the zone unless permission for such development has been obtained in writing from the authority in accordance with provisions of the Act. The other provisions of the CHAPTER-V regulate the manner in which a building permission is required to be obtained by the person who wants to undertake or carry out any development in the notified area.

17. Section 25 deals with demolition of the buildings commenced or is being carried out or completed in contravention of zonal plan or without permission referred to in Section 13 or in contravention of any condition subject to which such permission has been granted.

18. Section 54 is vital provision for the discussion we have undertaken and the same deserves to be reproduced hereunder:-

54. Cessation of the provisions of certain Acts. (1) As from the date of operation of plan in a zone, fixed under section 11—

(a) the provisions of the Jammu and Kashmir Town Planning Act, 1963;

(b) CHAPTER-XXI of the Jammu and Kashmir Municipal Act, 2008;

(c) Clause (4) of Section 45 and Section 46 of the Jammu and Kashmir Town Area Act, 2011;

shall cease to apply in the zone in which the plan is operated, for such period as the Government may by notification specify.

(2) Notwithstanding the provisions of sub-section (1) —

(a) anything done or any action taken (including permission for erection, re-erection or development granted) under the provisions of any of the aforesaid laws shall continue to be in force and be deemed to have been done or taken under the provisions of this Act unless and until it is superseded by the competent authority under this Act ;

(b) all suits, prosecutions and other legal proceedings instituted or which might have been instituted for or against the Municipality or Town Area Committee or any other authority under the said provisions of the aforesaid Acts may be continued or instituted by, for or against the Municipality, Town Area Committee or the authority, as the case may be.

19. From plain reading of Section 54, it would clearly transpire that as from the date of operation of plan in a zone, fixed under Section 11, the following provisions of different legislations would cease to apply in the zone in which the plan is operated:-

- (a) the Provisions of Jammu and Kashmir Town Planning Act 1963,
- (b) CHAPTER-XXI of Jammu and Kashmir Municipal Act 2008,
- (c) Clause (4) of Section 45 and Section 46 of the Jammu and Kashmir Town Area Act, 2011.

Clearly, the similar provisions, if any, contained in any other legislations have not been touched or overridden by the Act of 1970.

20. From the above, it would, therefore, become abundantly clear that the Development Act of 1970 does not supplant the provisions with regard to undertaking the development i.e., erection and re-erection of buildings contained in other statutes.

21. There is no dispute that Block Harwan falls in and is part of notified area declared by the Government under SRO 109 dated 27th March 1997 read with SRO 57 dated 10th February 1999 and, therefore, LCMA an authority constituted for the aforesaid area shall ordinarily have jurisdiction and control over the developmental activities undertaken or carried out by the people in the said notified area. However, a question that begs determination is whether on the coming into force of the J&K Panchayati Raj Act, 1989 and constitution of urban area consisting of above-named villages as Rural Block, the LCMA shall continue to have its jurisdiction and control over the erection or re-erection of buildings (the development within Block Harwan). The Panchayati Raj Act has been enacted to provide for constitution of Halqa Panchayats, Block Development Councils and the District Planning and Development Boards as also to promote and develop Panchayati Raj in the Union Territory of Jammu and Kashmir as an instrument of vigorous local self-Government to secure effective

participation of the people in the decision-making process and for overseeing implementation of development programmes.

22. CHAPTER-III of the Panchayati Raj Act deals with powers and functions of Halqa Panchayat. The functions which Halqa Panchayat shall perform are specified in Schedule I-A. Schedule I-A does not speak of the developmental activities like erection, re-erection of buildings (residential or commercial), shops and other structures like entertainment houses etc. Apart from the functions which Panchayat Halqas are required to perform, the Halqa Panchayats are put under a statutory duty to make provision for certain things enumerated in sub-Section 2 of Section 12 which includes a provision for regulation of buildings, shops and entertainment houses and checking of offensive or dangerous trades. It is also the duty of the Panchayat Halqa to make a provision for construction and maintenance of slaughter houses and for regulating the sale and preservation of the meat etc. Clause (iv) & (v) of sub-Section 2 of Section 12 is perhaps the only provision in the Panchayati Raj Act dealing with regulation of buildings. Whether regulation of buildings in the context would include preparing plans and framing building laws to have a planned development of the villages is a debatable issue. However, what we find very clear and unambiguous is that such power or duty is imposed upon the Panchayat Halqa to make a provision for regulating the buildings, shops and entertainment houses and if this duty is understood to mean regulating erection and re-erection of buildings, then it would require Panchayat Halqa to prepare a sort of master plan for the entire Panchayat Halqa divided into certain zones and lay down building bye-laws so that the development of the Panchayat Halqa, including

the erection and re-erection of buildings and other development activities, are regulated.

23. It seems that the Halqa Panchayats have neither the expertise nor the wherewithal to undertake such exercise. At least nothing of the sort was brought to our notice by either-sides. In the absence of such development plan in position and the building bye-laws framed, it would not be possible for any Halqa Panchayat to sanction building permissions for raising the construction. We thus need to view the provision of regulation of buildings in the aforementioned context and fact situation.

24. From reading of Section 12 in its entirety, it clearly comes out that the duty imposed on Halqa Panchayat is to broadly regulate the buildings, shops and entertainment houses, and checking of offensive or dangerous trades within the Halqa, i.e., specifying spaces for residential buildings, commercial construction and slaughter houses, as also for running of offensive and dangerous trades. This duty imposed upon Halqa Panchayat would not include the grant of building permissions, checking violation of such permission and to order demolition where the construction was found to be raised either without building permissions or acting in derogation or violation of such permission.

25. We are aware that the Government of Union Territory is empowered under Section 80 of the Panchayati Raj Act to make rules for carrying out the purpose of the Act in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the following:

- (i) for all matters expressly required or allowed by this Act to be prescribed by rules; and

- (ii) for the procedure for exercise of civil and criminal jurisdiction; imposition of penalties by Panchayati Adalat;
- (iii) procedure regulating the conduct of elections to Panchayat Halqas and [Chairperson] of Block Development Council;
- (iv) that a contravention of any rule made under this Act shall be punishable with a fine which may extend to fifty rupees.

26. Similarly, Section 81 confers power on Halqa Panchayat to make bye-laws to carry out its duties and functions. This power is, however, subject to any rules made by the Government of Union Territory of Jammu and Kashmir. It thus needs to be taken note of that in the exercise of its rule-making power, the Government has framed the Panchayati Raj Rules, 1996, and Rule 155 deals with construction of new buildings or extension or alteration of any existing buildings. Rule 155 is elaborate and provides detailed procedure for seeking permission to erect or re-erect buildings in the area falling in the Panchayat Halqa. Though there is no specific provision prohibiting a person from constructing or reconstructing or commencing to construct or reconstruct a house or building etc. without seeking previous approval of the competent authority to be constituted by the Government. Such provision has been made in the rules by the Government without having such power conferred upon it under the Act.

27. Rule 155, in our humble opinion, is beyond the rule-making power of the Government. Reading Rule 155 in its entirety, it is not discernible as to which rules, regulations and bye-laws would govern the construction in the Halqa Panchayat. The framing of Rule 155 is an outcome of total non-application of mind by the Government. In the absence of any specific

provision in the Act, the Government by framing rules cannot create new rights and liabilities. Otherwise also, as pointed out above, Rule 155 would be totally unworkable unless there is a developmental plan framed for the Halqa Panchayat and specific building bye-laws are framed to give effect thereto.

28. We are equally aware that in terms of Section 3, the Panchayati Raj Act has been given overriding effect over other legislations which are inconsistent with the provisions contained in the Panchayati Raj Act. Section 3 reads as under:-

“3. Act to over-ride other laws

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or instrument having effect by virtue of any such law”.

29. In view of the discussions we have made hereinabove, we do not find any conflict between the Development Act of 1970 and the Panchayati Raj Act, 1989 insofar as provisions with regard to constructions and reconstructions in the notified areas under the Development Act are concerned. The Panchayati Raj Act only regulates the constructions of buildings, shops and slaughter houses etc. and enjoins upon the Panchayat Halqa to make provision for regulation of such constructions. The duty of the Panchayat to make such provision is to ensure that different areas in the Panchayat Halqa are earmarked for residential constructions, commercial constructions and the slaughter houses etc. There is no such power given to the Halqa Panchayat to regulate the constructions of individual houses and commercial establishments in conformity with some building laws framed by it subject to the rules framed by the Government. Neither, the Halqa

Panchayats have been empowered to frame development plans and zonal plans for the Panchayat Halqa, nor do they have the expertise and the resources to regulate the compliances with the building permission bye-laws, if any, framed. The Halqa Panchayat are also devoid of any enforcement machinery to ensure that the constructions are raised in the Halqa Panchayat in conformity with building bye-laws, if any. The Act does not empower the Government to do these activities or to perform such functions in the area falling in a particular Panchayat Halqa. The Government cannot in the exercise of its rule-making power arrogate to itself the power which is not vested in it under the Act.

30. Viewed thus, we do not find any conflict between the Development Act and the Panchayati Raj Act insofar as regulation of building permissions and their violations are concerned. If the area of Harwan is part of a Notified Area for which LCMA has been constituted, it is the LCMA and the Control of Building Authority which alone shall have jurisdiction to grant building permissions and to ensure that no construction or development takes place in the notified area either without building permissions or in violation of permissions granted.

31. Viewed from any angle, we find no merit in this appeal, the same is accordingly **dismissed**.

32. Before parting, we would like the Government to revisit the Panchayati Rules framed by the Government in the exercise of its rule-making power and to delete Rule 155 which is beyond its rule-making power. Nothing prevents the Government to make a provision in the Panchayati Raj Act akin to the provisions made in the Development Act, the Municipal Act and the Municipal Corporation Act for regulating the

constructions and development within the area of their respective jurisdictions. Unless such provision is made in the Act and proper infrastructure is created, it would not be possible to regulate the erection and re-erection of buildings in the rural areas falling in different Halqa Panchayats. It seems that because of enough land and space available in the villages, the people regulate their constructions as per the village customs and traditions and, of course, having regard to the easementary rights of the adjoining owners etc. Similarly, Section 54 of the Development Act also needs a fresh look and amendment so as to exclude the applicability of inconsistent provisions in other legislations like J&K Municipal Act, 2000, J&K Municipal Corporation Act, 2000 and Panchayati Raj Act, 1989. This would avoid ambiguity that emerges due to overlapping of certain provisions, more particularly the provisions relating to development i.e., erection & re-erection of Buildings etc.

33. Without saying much, we leave it to the Government to look into the issue broadly having regard to the discussion we have made hereinabove for the purpose of disposal of this appeal.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

29.04.2026

Altaf

Whether approved for reporting? Yes