

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP No. 2306/2018

IA No. (1/2018)

Ghulam Ahmad Bhat And Anr.

...Applicant(s)/Petitioner(s)

Through: Mr. Qazi Ayaz, Advocate

VERSUS

State of J&K And Ors.

...Respondent(s)

Through: None

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE.

ORDER

05.08.2026

1. Before proceedings with the facts' narrative of the case, a brief reference to J&K Common Lands Regulation Act, 1956 is called for which in terms of its section 3 refers to exercise of right over pathway and places used for common or public purposes. Section 3 mandates that every Inhabitant of a village is entitled to exercise right of user in respect of any road, street, lane, path, channel, drain, well, tank or any source of water supply in a village including the village of which he is not even an inhabitant.

2. Section 4 provides for dealing with any alleged act of obstruction or denial in exercise of any act of obstruction/denial/encroachment referable to the exercise of right as envisaged and protected under section 3.
3. J&K Common Lands Regulation Act, 1956 falls back upon J&K Land Revenue Act, Svt. 1996 for the purposes of jurisdiction of revenue officers to act under section 4 of the J&K Common Lands Regulation Act, 1956 and that is how the Assistant Collector 1st Class (Tehsildar), D.H. Pora came to be approached by the respondents 4 and 5 with an application alleging encroachment of path by reference to **khasra No. 926 and 927**.
4. The respondents No. 4 and 5 ventured to file an application before the Assistant Collector 1st Class (Tehsildar), D.H. Pora, Kulgam thereby invoking J&K Common Lands Act, 1956 bearing an allegation that four persons namely **Abdul Rashid Malik, Gh. Hassan Malik, Mohammad Amin Malik and Gh. Ahmad Bhat** have carried out encroachment of a public pathway falling under

survey No. 926 and 927 of Ahmadabad, Tehsil D.H. Pora, District Kulgam.

5. The two petitioners herein figured as non-applicants No. 4 and 2 in said application.
6. All the four non-applicants including the two petitioners objected to and denied the allegation of encroachment on their part by stating that **khasra No. 926** is of ownership khasra number which admits of existence of no pathway much less common and, thus, the claim of the respondents 4 and 5 as complainant was misconceived.
7. The Assistant Collector 1st Class (Tehsildar), D.H. Pora, by purported inquiry and reports from the Naib Tehsildar and the Patwari concerned, came to conclusion that there is an encroachment made by the four non-applicants including the two petitioners upon public pathway under **survey No. 926 and 927** of village Ahmadabad and ordered the restoration of the same for use and enjoyment of the respondents 4 and 5 as applicants and other villagers.

8. The Assistant Collector 1st Class (Tehsildar), D.H.

Pora came up with a final order dated **18.08.2017** against which the two petitioners, instead of availing remedy of appeal as provided under section 15 of the J&K Common Lands Regulation Act, 1956, resorted to revisional power under J&K Land Revenue Act, Svt. 1996 by preferring revision on **File No. 112/FC-AP** dated **05.09.2018** before the learned Financial Commissioner (Revenue), J&K who, by virtue of order dated **19.06.2018**, came to dispose of the revision petition which is said to have been instituted on **05.09.2018** which date obviously is in reverse order, by agreeing with the conclusion of the Assistant Collector 1st Class (Tehsildar), D.H. Pora by bringing in the concept of Shamilat Land.

9. Instead of examining the legality and validity of the order of the Assistant Collector 1st Class (Tehsildar), D.H. Pora, the Financial Commissioner (Revenue), J&K had come up with his own take by reference to the fact that **khasra No. 927** is Shamilat land out of which **13 kanals 18 marlas**

is recorded as a “Shara-i-aam” and **1 kanal 13 marlas** is under illegal occupation of Mohd. Shafi S/o Gh. Nabi Malik and Rehman S/o Gani Wagay.

10. None of said two illegal encroachers figured as non-applicants in the matter before the Assistant Collector 1st Class (Tehsildar), D.H. Pora.

11. The learned Financial Commissioner (Revenue), J&K himself did not come to any finding as to how, by reference to their ownership in **khasra No. 926**, the petitioners are being tainted to be encroacher/s of Shamilat land in **khasra No. 927**.

12. At first instance, the Assistant Collector 1st Class (Tehsildar), D.H. Pora in his original adjudication has acted more as a layman rather than a revenue official without bothering himself to consult the revenue record of **khasra No. 926** as to whether the same admits of any mention of any pathway obtaining upon it which otherwise it does not bear for the reason being that the petitioners have annexed the revenue record of Girdawari of year 2015 in which **khasra No. 926** measuring **11 kanals 16 marlas** has **9 kanals 16**

marlas “bagh khushki” and **2 kanals** “banjar kadeem”.

13. If left to the judgment of the Assistant Collector 1st Class (Tehsildar), D.H. Pora, then even **khasra No. 926** has been declared to be a common pathway without identifying as to whether the petitioners have overstepped their ownership **khasra No. 926** and intruded into adjoining **khasra No. 927**, and if so, to how much extent.

14. The Assistant Collector 1st Class (Tehsildar), D.H. Pora just consulted and appropriated a wild guess of declaring the petitioners as encroachers and literally injuncting them from their own land of **khasra No. 926**.

15. All these glaring gaps of adjudication of facts fell to non-consideration of the learned Financial Commissioner (Revenue), J&K who, very casually and in a cursory manner, hastened to dispose of revision petition which haste is evident from the very mention of the dates in the order about institution of the revision petition and date of announcement of the decision all being at variance

and that is reflective of state of mind of the then Financial Commissioner (Revenue), J&K authoring the order.

16. In the light of the aforesaid, this Court has no iota of doubt that both adjudications that is of the Assistant Collector 1st Class (Tehsildar), D.H. Pora and the Financial Commissioner (Revenue), J&K are perverse which are accordingly set aside.

17. The petitioners who are relatable to their own **khasra No. 926** cannot be declared to be encroachers by reference to **khasra No. 927** without there being any evidence to said effect on record and, as such, two orders of adjudication are set aside.

18. A copy of this order be forwarded to the Assistant Collector 1st Class (Tehsildar), D.H. Pora for the sake of being taken on record.

19. **Disposed of.**

(RAHUL BHARTI)
JUDGE