Serial No. 17
Regular

HIGH COURT OF JAMMU &KASHMIR AND LADAKH AT SRINAGAR

WP (C) No. 1928/2025 c/w
WP (C) No. 455/2026

i) Inhabitants of Tehsil Aloosa District Bandipora
…Petitioner(s)..

Through:- Ms Asma Rashid, Advocate

ii) Mohammad Shafi Tas (Gojar) and others
Through: Mr B A. Misri, Advocate

v.

Union Territory of J&K and others

Through:- Mr Illyas Nazir, GA
Mr B. A. Misri, Advocate

CORAM:
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

ORDER
04.11.2026

01. Both these petitions arise out of the same decision of the respondents and raise a common question. They have, therefore, been heard together and are being disposed of by this common order.

BRIEF FACTS:

02. The respondents, in exercise of their administrative powers, have identified and selected a site, at Aloosa, Bandipora, for construction of Tehsil office for which the administrative approval has been granted in terms of Order No. 53/DDC/TSP/BPR of 2025 dated 04.08.2025, hereinafter for short to be referred as 'impugned order'. The petitioners of WP (C) no. 1928/2025 had moved a representation to the concerned authorities for construction of tehsil office at Aloosa, Burdal, which had been entertained by constituting a committee who had to report within seven days about the feasibility of the site and its recommendations. During

the currency of such prescribed period the impugned order was issued constraining the petitioners to file a writ petition, registered as WP (C) No. 1928/2025.

03. On the other hand, the writ petitioners of WP(C) no. 455/2026 are objecting to the site proposed by the petitioners of first writ petition for construction of Tehsil Office.

04. **In WP(C) No. 1928/2025**, the petitioners seek a writ of certiorari to quash the order No. 53/DDC/TSP/BPR of 2025 dated 04.08.2025 for being arbitrary and non-speaking, besides seeking writs of mandamus and prohibition to direct respondents 2 and to 3 to pass a fresh reasoned order after receiving the committee report and prohibit the respondents from raising any construction unless proper location is specified and public interest is evaluated.

05. **In WP(C) No. 455/2026**, the petitioners seek a writ of prohibition restraining the respondents from raising any construction of Tehsil Office at any site other than the one where the same is existing. The petitioners have also sought a writ of mandamus commanding the respondents not to change the present status and nature of Kahcharai land falling under survey Nos. 107, 111 & 112 situated at Mallengam, Tehsil Aloosa, Bandipora.

06. The respondents have filed their reply to the first writ petition wherein they concede that the proposed land at Aloosa Burdal is more suitable for the construction of Tehsil office. It would be profitable to reproduce the relevant portion of the reply herein:

> *"2. ....It is worth to mention herein the proposed location at Aloosa as well as the location at Gurdal Malangam are accessible and*

> *connected by roads from all sides. It is further submitted that the matter was examined and in this regard a committee was constituted with the mandate to recommend the suitable location for the said construction, besides conducting meetings/ discussions with all the stakeholders, spot visits conducted by answering respondents including the respondent No. 02,* ***and keeping in mind the availability of sufficient space required for future and further establishment of offices/ accommodations, it has been found that the location at Gurdal Malangam can be a better choice for construction of the said Tehsil office building****." (emphasis supplied)*

07. Heard learned counsel for the parties and perused the record, including the reply filed by the respondents.

08. Ms Asma Rashid, learned counsel for the petitioners in the first petition submits that the impugned order is bad in law for having been issued at a time when the representation of the petitioners seeking shifting of Tehsil Office to Burdal Aloosa was under consideration of the competent authority and is adequately feasible from all perspectives to house the Tehsil office; that construction of the tehsil office at the site for which the funds have been allotted in terms of the impugned order would cause wastage of public funds.

09. Mr B. A. Misri, learned counsel for the petitioners in the second petition submits that the site sought to be projected by the petitioners in the first petition for construction of Tehsil Office would be to the prejudice of the petitioners, the identified land is a Kahcharai land on which the livestock of the petitioners is wholly and solely depend upon. Learned counsel submits that the Tehsil office has been in existence at Aloosa for quite a long time now and its relocation would serve no fruitful purpose.

10. Mr Illyas Nazir, learned Government Advocate submits that the site projected by the petitioners in the first writ petition for construction of Tehsil Office is undoubtedly feasible in all possible ways and except for involving more amount for its construction, the site is perfect for the purpose keeping in view the availability of State land, accessibility, and the suitability of the plot for construction; that the choice of location is an administrative function; and that no legal or statutory right vests in either petitioner to insist upon a particular site.

Analysis:

11. The controversy, stripped of its detail, is one of preference as between two sites. The question for determination is whether this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, can direct the executive to locate a public building at a place of the petitioner's choosing, or to restrain it from doing so at the place it has chosen.

12. The location of a public building such as a Tehsil Office is a matter that falls within the domain of executive discretion. It involves a weighing of several considerations, namely the availability and title of land, the demographic spread of the Tehsil, accessibility, cost, suitability of terrain, and the existing infrastructure. These are matters on which the executive is better placed, by expertise and experience, than a writ court. The Court does not sit in appeal over the wisdom of such a decision, nor does it substitute its own view for that of the competent authority.

13. The scope of judicial review in such matters is confined to the decision-making process and not the decision itself. As held in *Tata*

Cellular v. Union of India, (1994) 6 SCC 651, the Court may interfere where the decision is tainted by illegality, irrationality or procedural impropriety, but it cannot examine the correctness of the decision on merits. The principle was reiterated in *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517, wherein it was observed that the Court must not interfere merely because a different decision was possible or because the petitioner finds another course more desirable.

14. Tested on these touchstones, nothing has been shown that would vitiate the selection of the site. There is no allegation of *mala fides*, nor is any statutory provision or binding guideline pointed out that has been violated. The selected site is Government land, and the respondents have furnished a reasoned justification for choosing it. The mere fact that another site may be more convenient to a section of residents does not render the choice arbitrary or unreasonable. In any public project of this nature, a measure of inconvenience to some is inevitable, and a preference for one site over another, however sincerely held, does not translate into a legally enforceable right.

15. As regards the petitioners in the WP (C) No. 455/2026, no right, statutory or otherwise, has been demonstrated to compel the respondents to establish the Tehsil Office at the alternative site. A writ of mandamus lies only to enforce a legal duty owed by the authority to the petitioner. In the absence of any such duty, the relief sought is, in essence, a prayer that this Court override the discretion vested in the executive, which is impermissible. The grievance raised is one of policy preference and not of legal injury.

16. As regards the petitioners in WP (C) No. 1928/2025, the decision to relocate the Tehsil office at the site proposed by the petitioners has been found to be in consonance with the stand of the respondents themselves.

17. In view of the foregoing, the petitions are disposed of in the following terms:

> (i) WP(C) No. 1928/2025 *is* ***allowed*** *by quashing the impugned order bearing No. 53/DDC/TSP/BPR of 2025 dated 04.08.2025. The respondents are left free to relocate the Tehsil office at the proposed site, covered under survey No. 107 min in estate Malangam (Gurdal).*
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> (ii) WP(C) No. 455/2026 is **dismissed**, being devoid of merit, as the choice of site lies exclusively within the discretion of the executive and no legal right of the petitioners stands infringed.
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> (iii) Any interim direction operating in either petition shall stand vacated.
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> (iv) Nothing in this order shall preclude the respondents from taking any lawful decision regarding the site in future, in accordance with law and on relevant considerations, should any bona fide administrative need arise.
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> (v) There shall be no order as to costs.
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> (vi) Connected CMs, if any, shall also stand disposed of accordingly.

18. A copy of this order shall be kept on each file.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Srinagar.
04.11.2026
Amjad lone, Joint Registrar/Secretary

Whether the judgment is speaking :**Yes**
Whether the order is reportable :**No**