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

*Reserved on: 26.09.2026*
*Pronounced on: 30.10.2026*
*Uploaded on: 30.10.2026*

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

**CM(M) No.331/2025**
**c/w**
**CCP(S) No.596/2021**

**AB. AZIZ MIR**

**...PETITIONER(S)/APPELLANT(S)**

*Through: - Mr. J. H. Reshi, Advocate with*
*Mr. Shah Murtaza, Advocate.*

Vs.

**JAVAID AHMAD KHAN & OTHERS**

**...RESPONDENT(S)**

*Through: - Mr. Nisar Ahmad Bhat, Advocate with*
*Ms. Shah Bareer, Advocate.*

**CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGMENT**

**1)** The petitioner, through the medium of instant petition, has invoked jurisdiction of this Court under Article 227 of the Constitution of India, for quashing the order dated 08.08.2025 passed by the Court of learned 1st Additional District Judge, Srinagar, (for short, "the executing court"), in an application filed by the respondent No.1 i.e. son of the deceased decree holder for appropriate orders regarding execution of judgment and decree passed on 24.06.1997.

**2)** The petitioner has assailed the impugned order on the following grounds:

(I) That the petitioner is the *lis pendens* purchaser of the property in question, which is the subject matter of litigation.

(II) That the *ex-parte* judgment and decree dated 24.06.1997, passed by the learned 1st Additional District Judge, Srinagar, is nullity and non-est in the eyes of law.

(III) That the executing court had become functus officio as the earlier execution application was consigned to records by it in terms of order dated 30.07.2018, and the executing court has no power whatsoever to pass the order dated 08.08.2025, directing the sealing and seizure of land measuring 16 marlas, residential house, Band Saw and other superstructures existing on the same, allegedly under the use and occupation of the petitioner.

(IV) That the other legal heirs of the deceased decree holder, Mst. Zainab, namely, Mushtaq Ahmad Khan, Farooq Ahmad Khan and Ghulam Mohammad Khan, had not filed application for appropriate

orders before the executing court once the execution petition was consigned to records as having been discharged.

**Submissions:**

**3)** Learned counsel for the petitioner has submitted that the learned executing court has not considered the fact that principle of *res judicata* was not applicable in the case projected by the petitioner, as his projected claim was never decided by any court. He further argued that the decree and judgment passed by the court without jurisdiction is nullity and un-executable in the eyes of law and further that he has been condemned unheard. In support of his submissions, learned counsel for the petitioner has placed reliance upon the following judgments:

i) National Confederation of Officers Association vs. Union of India & Ors,
(2022) 4 SCC 764,

ii) State of Orissa and anr. Vs. Dhirendra Sundar Das and Ors.
(2019) 6 SCC 270,

iii) State of Punjab vs. Davinder Pal Singh Bhullar & ors.
(2011)14 SCC 770,

iv) Periyammal (dead) through LRs. Vs. V. Rajamani and anr.
2025 SCC OnLine SC 507,

v) Bangalore Development Authority v. N. Nanjappa and anr.
AIR 2022 SC 81,

vi) Rahul S. Shah vs. Jinendra Kuamr Gandhi and ors. (2021) 6 SCC 418,

vii) Sunil Vasudeva and Ors. vs. Sundar Gupta and Ors. (2019) 1 SCC 385,

viii) B. Gangadhar v. B. G. Rajalingam, AIR 1996 SC 780,

ix) Odisha State Financial Corporation vs. Vigyan Chemical Industries & Ors. 2025 SCC OnLine SC 1609,

x) Sushil Kumar Mehta vs. Gobind Ram Bohra, (1990) 1 SCC 193,

**4)** *Per contra*, Learned counsel appearing for Respondent No. 1 submitted that the petitioner initially projected himself as the donee of the subject property, whereas in the present petition, he claims to have purchased the same. The petitioner cannot be permitted to alter his stand at his sweet will and is, therefore, not entitled to any relief. He further submitted that identical issues to those raised herein were previously agitated by the petitioner in a series of petitions before this Court as well as the Hon'ble Supreme Court of India, all of which met with failure and were duly dismissed.

**5)** Heard and perused the record.

**Facts:**

**6)** Brief facts necessary for the disposal of this petition are that one Mst. Zainab Begum, the original decree holder, alienated one kanal of land in favour of her son, namely, Mushtaq Ahmad Khan. Within a short period after the alienation, Mushtaq Ahmad Khan transferred the property

in question. Thereafter, Mst. Zainab filed a suit claiming right of prior purchase against her son, alleging that one kanal of land alienated to him under family settlement by her, has been clandestinely sold by him by executing a sale deed dated 30.01.1991, in favour of one Ghulam Nabi Shah. During pendency of the said suit, Ghulam Nabi Shah executed a sale deed dated 20.07.1991, in favour of Ali Mohammad, Mst. Mehra and Ghulam Mohi-ud-Din, and, accordingly, the property came to be mutated in their favour by the revenue authorities. After Mst. Zainab Begum acquired knowledge of the clandestine sale, she got the suit amended and also challenged the subsequent sale deed dated 20.07.1991. She also filed an application to restrain the defendants therein from alienating the suit property or to change its character. In terms of order dated 22.07.1993, the aforementioned application was allowed, and the learned trial court passed an order of status quo. As the defendants therein did not choose to appear before the trial court, an *ex parte* judgment and decree dated 24.06.1997 came to be passed in favour of Mst. Zainab Begum, whereunder she was held entitled to first right to purchase the property. The Collector was directed to deliver her possession of the property in question. Out of purchase amount, a sum of Rs. 10,000/ was already deposited and remaining ₹40,000/-

was to be deposited up to 25.07.1997, failing which the suit was deemed to be dismissed. Thereafter, Mst. Zainab Begum initiated the executing proceedings.

**7)** However, the petitioner filed a writ petition bearing OWP No.45/1998, with a prayer for quashing the judgment and decree, claiming therein that he had acquired the right in the subject property on the basis of oral gift made by the newly impleaded defendants in the suit in his favour. The learned Writ Court, in terms of judgment dated 19.02.2007, set aside the judgment and decree. The aforesaid judgment of the learned Writ Court came to be assailed by Mst. Zainab Begum in terms of LPA No.73/2007, which came to be allowed in terms of order dated 14.09.2012, and the judgment and decree passed by the learned trial court was restored along with the execution proceedings and the appellant namely Zainab Begum was held entitled to costs of Rs. 20,000.

**8)** The petitioner assailed the order dated 14.09.2012 passed by the Division Bench of this Court in LPA No. 73/2007 before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 34332/2012; however, the same was withdrawn with liberty to seek such other redress as may be permissible in law, vide order dated 26.11.2012. Thereafter,

the petitioner filed an application before the executing court, contending that the decree was inexecutable and a nullity in law. The learned executing court, vide order dated 22.07.2013, dismissed the said application.

**9)** Aggrieved by the order dated 22.07.2013, the petitioner preferred Civil Revision No.43/2013, wherein the learned Single Judge of this Court, in terms of order dated 01.10.2013, directed the Deputy Commissioner, Srinagar, to take over possession of the property and petitioner was directed to execute undertaking before the Deputy Commissioner that he will not transfer the house, he will not create any third party interest in the house and will not change the nature of the house.

**10)** Thereafter, the said revision petition came to be dismissed in terms of order dated 03.07.2018. The petitioner filed a review petition bearing RP No.06/2018, seeking review of the order dated 03.07.2018, but the said review petition was also dismissed in terms of order dated 21.07.2018.

**11)** The petitioner thereafter approached the Hon'ble Supreme Court of India through Special Leave to Appeal (Civil) Nos.2776-2777/2019, impugning orders dated 03.07.2018 passed in Civil Revision No.43/2013 and

21.07.2018 passed in RP No.06/2018, by the learned Single Judge of this Court, and after hearing the parties, the SLPs came to be dismissed in terms of order dated 26.08.2021.

**12)** In the interregnum, vide order dated 10.07.2018, in compliance to the directions of this Court, the executing court directed Deputy Commissioner, Srinagar, as well as Tehsildar, Shalteng, to deliver the possession of the land covered under decree within a period of 20 days and file report by 30.07.2018, on which date a report was submitted and after taking note of the report of Tehsildar concerned, the execution proceedings were disposed of.

**13)** On the very next day, i.e., 01.08.2018, the decree-holder filed an application seeking appropriate orders, asserting that the Tehsildar concerned had submitted a false compliance report on 26.07.2018, and that signatures of the applicant were obtained on a blank paper by the Tehsildar, Shalteng. It was further submitted that an objector was in possession of the subject property, despite the fact that the Deputy Commissioner, Srinagar, had previously filed an affidavit before the High Court stating that the property had been sealed and placed under *Supardnama*.

**14)** Meanwhile, an intervenor (the petitioner herein) also filed an application stating that he was in possession of the

suit property and that the compliance report submitted by the Tehsildar, Shalteng, was false and fabricated.

**15)** The order dated 10.07.2018 passed by the learned executing court was assailed by the petitioner through the medium of Civil revision bearing CR No. 30/2018 but that also was dismissed by this court vide order dated 06.09.2018.

**16)** Apart from the aforesaid litigation, the petitioner in the year 2015 also preferred an appeal against the judgment and decree dated 24.06.1997, along with an application for condonation of delay bearing COD No. 105/2015. The said condonation application was disposed of vide order dated 12.10.2017, granting liberty to the petitioner to prosecute the pending revision petition, i.e. Civil Revision No. 43/2013.

**17)** The petitioner assailed the order dated 12.10.2017, through the medium of LPAC No.259/2017, but the said appeal was dismissed as not maintainable, in terms of order dated 31.10.2018. The petitioner thereafter filed Special Leave Petition (Civil) Diary No. 1739/2020, against the orders dated 06.09.2018 passed in Civil Revision No.30/2018 and order dated 31.10.2018 passed in LPA

No.259/2017, but the Special Leave Petition was dismissed in terms of order dated 15.07.2022.

**18)** Taking note of both applications filed by decree holder and the intervener i.e. petitioner, the learned executing court directed the Tehsildar, Shalteng, and the Deputy Commissioner, Srinagar, to furnish their replies/ explanations. Thereafter, vide order dated 26.02.2022, the executing court, after adverting to its earlier orders, recorded its satisfaction that the decree passed in favour of the decree-holder was not executed and issued notices to the Deputy Commissioner, Srinagar, and the Tehsildar, Shalteng, directing them to explain why the decree had not been executed in letter and spirit. They were further directed to execute the decree with police assistance, hand over physical possession of the suit land to the decree-holder, and submit a compliance report

**19)** The order dated 26.02.2022 was assailed by the petitioner in CM(M) No.31/2022. The learned executing court in terms of order dated 28.03.2022, kept the proceedings in abeyance in view of the fact that the record was called by this Court.

**20)** CM No.1469/2022 came to be filed by the respondent No.1 in CM(M) No. 31/2022, and this court observed that

there was no stay with regard to execution of the decree by this Court, and accordingly executing court was directed to proceed further in the execution petition pending on its files. The petitioner sought a review of the aforesaid order through the medium of RP No. 28/2022, wherein notice was issued to the caveator i.e. respondent No. 1.

**21)** Thereafter, in terms of order dated 30.05.2022, the learned executing court directed the Deputy Commissioner, Srinagar, as well as Tehsildar, Shalteng, to comply with the order dated 26.02.2022.

**22)** Thereafter, the petition bearing CM(M) No.31/2022, whereby the order dated 26.02.2022, was assailed, also came to be disposed of as having been rendered infructuous, in terms of order dated 20.04.2024.

**23)** The executing court, after taking note of the factual aspects of the case, in terms of order dated 08.08.2025, again directed Deputy Commissioner, Srinagar, and Tehsildar, Shalteng, to seal the property forthwith along with structure existing over it and be kept at the supurdari of Tehsildar concerned.

**Analysis:**

**24)** The first contention raised by the petitioner is that the petitioner is the *lis pendens* purchaser of the property in

question, but the learned executing court has not taken into consideration the same and has proceeded to pass the impugned order.

**25)** In the very first writ petition filed by the petitioner, bearing OWP No. 45/1998, he pleaded that he had acquired a right in the subject property on the basis of an oral gift executed by the newly impleaded defendants in the suit. The petitioner further contended in the said writ petition that the law governing the right of prior purchase was not applicable to the instant case. The Division Bench of this Court in terms of judgment dated 14.09.2012, while adjudicating the LPA preferred by the original decree holder, framed the following question:

> whether the writ petitioner/respondent No.1 would be bound by the judgment and decree dated 24.06.1997 by operation and application of the principle of lis pendens?

**26)** The above-mentioned question was answered by the Division Bench by holding that the principles of lis pendens would apply in respect of transfers/alienation which have been affected after filing of the civil suit by the appellnat, Mst. Zainab Begum, and the judgment and decree dated 24.06.1997, passed by the civil court would be applicable to the oral gift claimed to have been made to the petitioner by the newly impleaded defendants in the suit. It was also

observed that once the rights of the parties including right of any subsequent beneficiary of a transaction are to be governed by the judgment and decree of civil court dated 24.06.1997, then no obstruction could be placed by the subsequent transaction including oral gift.

**27)** The said judgment was assailed by the petitioner, albeit without success, and the findings recorded by the Division Bench have since attained finality. The petitioner cannot now be permitted to shift his stance and advance an entirely new plea that he is a bona fide purchaser of the property in question. In ***Amar Singh v. Union of India*, (2011) 7 SCC 69,** the Hon'ble Supreme Court of India has observed that "*This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions.*"

**28)** Consequently, the contention raised by the petitioner is devoid of merit and stands rejected.

**29)** It was next contended that the judgment and decree dated 24.06.1997, is a nullity as the provisions of Right of Prior Purchase Act were not applicable in case of the commercial property. The petitioner had raised an identical ground in Civil Revision No.43/2013, decided on

03.07.2018, albeit without success, and it would be apposite to take note of paragraph 4 of the judgment, which is extracted as under:

> 4. The application under section 47 of the Code, the petitioner sought dismissal of the execution proceeding. He, firstly claimed that he has acquired the suit property on the basis of oral gift made in his favour by respondents (defendants/ judgment debtors) 3 to 5 and the same has been duly mutated in his favour in the revenue records and that he has acquired the status of a legal representative of the said respondents / judgment debtors, competent to maintain his claim under section 47. Further he contended that the 'suit property, besides the land measuring 5440 sft., comprises also of a single storey structure with the bandsaw run therein for conducting business in manufacture and sale of fruit boxes. He assailed the judgment and decree primarily on the ground that the decree is nullity as 'no right of prior purchase is available about the place of business as prescribed by section 5 of the Jammu and Kashmir Right of Prior Purchase Act, SVT, 1993' (For short the Act) and that the trial court did not have inherent jurisdiction to pass the decree about the land on the basis of alleged right of prior purchase, which is not available under the statute. In addition, the petitioner contended that the decree is not executable as the land under the judgment and decree has not been identified inasmuch as the decree relates to land only, whereas the suit property comprises of a structure also and that the execution petition is time barred.

**30)** The order dated 03.07.2018 was sought to be reviewed by Review Petition bearing No. 06/2018, but review petition was dismissed in terms of order dated 21.07.2018. For the purpose of assailing the order dated 03.07.2018, passed in Civil Revision No 43/2013, and order dated 21.07.2018, passed in Review Petition No.06/2018, the petitioner raised

the similar grounds before the Hon'ble Apex Court, but the SLP preferred by him was dismissed in terms of order dated 26.08.2021.

**31)** Finality in litigation is a basic tenet of jurisprudence, and permitting the petitioner to continually re-agitate identical issues would render legal proceedings interminable. It would be profitable to take note of the observations made by the Hon'ble Supreme Court of India in **B.S. Lalitha v. Bhuvanesh, 2026 SCC OnLine SC 860**, which are extracted as under:

> **35. The provision embodies a rule of conclusiveness that is founded in considerations of public policy. It rests upon the salutary doctrine that there must be a finality to litigation, and that a party which has once succeeded or failed on an issue should not be permitted to re-agitate the same at a subsequent stage.** The principle applies not only between two separate suits but also between two stages of the same litigation what is referred to as 'interlocutory *res judicata*.' In *Satyadhyan Ghosal* (supra), a three-Judge Bench of this Court in Para 8 held:
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> ***"The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether a trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings."***
>
> (emphasis added)

**32)** Also, it does not lie in the mouth of the petitioner to urge that he was denied an opportunity of being heard. His pleas were duly considered and adjudicated upon by the executing court, this Court, and the Hon'ble Supreme Court

of India, though on each occasion, his efforts met with failure. Accordingly, this contention of the petitioner too is rejected.

**33)** Lastly, it was contended that in terms of order dated 30.07.2018, the executing court had become functus officio as it had consigned the execution petition to records. It needs to be noted that on the very next day, i.e. on 01.08.2018, the decree holder complained to the executing court about the conduct of the Deputy Commissioner and Tehsildar, Shalteng, wherein the applicant had stated that signatures were obtained on plain paper and some objector was in possession of the said property. Interestingly, the petitioner also filed an application stating therein that the subject property was in his possession, thereby disputing the report submitted by Tehsildar concerned dated 26.07.2018, pursuant to which the execution proceedings were consigned to records. Once there is admission on the part of the petitioner that the subject property is in his possession, the order, pursuant to which the execution proceedings were consigned to records, becomes meaningless. Otherwise also, the petitioner cannot raise this plea in the instant petition, more particularly when the petitioner had raised similar plea in CM(M) No.31/2022, and

in terms of order dated 10.03.2022, the contention of the petitioner was recorded that there was no lis pending before the executing court. During the hearing of application bearing CM No. 1469/2022 arising out CM(M) No.31/2022, the argument was raised by the learned counsel for the petitioner that once the executing court had disposed of the matter, no lis was pending before the court below. While allowing CM No.1469/2022, preferred by respondent No.1 in terms of order dated 13.04.2022, in paragraphs 10 and 11 of the order, it was recorded as under:

> 10. The decree sought to be executed has attained finality, despite after several rounds of litigation between the contesting parties, and the decree passed in the year 1997 is yet to be executed despite all efforts of the applicant-respondent No.1. It can't be said that the decree cannot be executed simply for the reason that some Contempt matter is pending before this Court or before the Executing court also, with regard to the same matter against the official respondents.
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> 11. There was no stay with regard to the execution of the decree by this Court; the Executing court has unnecessarily kept its hands off by observing that the propriety demands that in view of summoning of the record by this Court that court should not proceed further in the matter. It is clarified that in absence of any clear direction from this Court with regard to not proceeding further with the case, the Executing court is under obligation to go ahead with the proceedings without waiting for any direction yet to be passed by this Court.

**34)** The aforesaid order dated 13.04.2022 has attained finality. This Court in terms of the said order reminded the executing court of its duty for executing the decree

expeditiously as directed by the Hon'ble Apex Court in **Rahul S. Shah v. Jetinder Kumar Ghandi & Ors.** (2021) 6 SCC 418 and directed the executing court to proceed further in the execution petition pending on its files. Interestingly, the petition bearing CM(M) No. 31/2022 was dismissed as having rendered infructuous pursuant to statement made by the learned counsel for the petitioner. The petitioner, as such, is estopped from raising the same issue again, which has attained finality. Accordingly, this contention of the petitioner is also rejected.

**35)** The judgments relied upon by learned counsel for the petitioner are not applicable to the facts and circumstances of the instant case.

**36)** From what has been discussed above, it becomes evident that the petitioner has left no stone unturned to scuttle the execution proceedings. He filed numerous petitions under Article 227 of the Constitution of India before this court, three SLPs before the Hon'ble Supreme Court of India, and despite the order dated 13.04.2022 (supra), passed by this Court, has abused the process of law by filing the present petition yet again. Once the order dated 26.02.2022 had attained finality in view of the order passed by this Court in CMP No.1469/2022 arising out of CM(M)

No. 31/2022, the petitioner could not have filed the present petition, thereby raising the same issues. It needs to be noted that CM(M) No.31/2022 stands dismissed as having rendered infructuous, pursuant to statement made by the learned counsel for the petitioner, as is evident from the order dated 20.04.2026.

**37)** It appears that the petitioner has taken no heed of the scathing observations made by the Division Bench of this Court while allowing the Letters Patent Appeal (LPA) preferred by the original decree-holder vide judgment dated 14.09.2012. The relevant paragraph whereof reads as under:

> "For some people litigation is a passion and it is used as an engine of harassment to others. If one set of litigant has lost the litigation, the other group is kept ready for inflicting fresh dose of litigation knowing full well the results. They tend to take chances and wait for the result that judicial administration might accept their point of view. The cycle of litigation might have ended in the higher courts unfavourably, yet a new beginning is made by initiating another judicial process. These are the basic features of the case in hand."

**38)** The aforesaid observations of the Division Bench continue to hold full force and effect, even after a lapse of fourteen years. The petitioner has made it a habit to assail every order passed by the executing court in a calculated attempt to frustrate the execution proceedings, as a result of which the decree-holder has remained deprived of the fruits

of the decree. This Court is firmly of the view that the petitioner is guilty of abusing the process of law by persistently raising identical issues that stand conclusively settled.

**39)** In light of above, this Court is of the considered view that the present petition is nothing but an abuse of process of law and, as such, the same is dismissed with costs of Rs.20,000/. Petitioner to deposit cost within four weeks.

**40)** The proceedings in CCP(S) No.596/2021 shall stand closed and the contempt petition is disposed of.

**(Rajnesh Oswal)**
**Judge**

**Srinagar,**
30.10.2026
"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES**