

IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 1344/2024
CM No. 3659/2024

Reserved on: 02. 06.2025
Pronounced on: 06.06.2025.

Abdul Majid Dar

S/O. Abdul Razak Dar

R/O. Lane No. 5, House No. 1,

Moominabad, Bypass, Srinagar.

...Petitioner(s)

Through:

Petitioner in person.

Vs.

1. **Union Territory of J&K** Through
Director General of Police, Srinagar.

...Respondent(s)

2. Senior Superintendent of Police,
Srinagar.

3. Station House Officer, Batmaloo,
Srinagar.

Through:

Ms Rahila Khan, AC, vice Mr. A. R. Malik, Sr. AAG.

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

JUDGMENT

01. The instant petition came up for consideration before this Court on 27th June, 2024, on which date, this Court, while considering the matter, issued notice in the first instance to respondent no. 3, [Station House Officer], Police Station, Batamaloo, Srinagar. Accordingly, the SHO, Police Station, Batamaloo, Srinagar, was directed to apprise this Court as to what steps have been taken in furtherance to the complaint alleged to have been filed by the petitioner and to file action taken report in this regard.

02. The short grievance projected by the petitioner in this petition is that a Shopping Line exists over his ancestral piece of land, consisting of 13 shops, out of which, six shops belong to the petitioner and few are in the custody/use of the tenants. The said shops, it is submitted by the petitioner, are in dilapidated condition and there is every possibility that the shops in question may come down and cause severe damage to the goods/materials lying inside the shops and even to the human lives. The further grievance of the petitioner is that an inspection was conducted in this regard by a leading Structural Engineering Company, which prepared a report stating therein that the shops in question have developed deep, visible and progressive cracks and in order to prevent any mishap, renovation/repair is required to be carried out. Accordingly, a complaint in this regard was filed before the respondent no. 3 i.e., SHO, Police Station Batamaloo, but the respondents, as per the petitioner, are not taking the matter seriously, which constrained him to approach this Court by way of filing the instant petition for protecting his legal and fundamental rights.

03. The respondent no. 3, i.e., SHO, Police Station, Batamaloo, Srinagar, has filed the status report, in which, it is specifically stated that Police Post, Tengpora received a complaint cum pre-information application via registered post from, one, Abdul Majid Dar [petitioner in the instant petition] stating therein that he along with his brother owns 12 shops at Lane No. 5 Moominabad and the entire shopping line is in a dilapidated condition and has developed a lot of cracks. It is further stated

in the response that, while acting upon the complaint cum pre-information application, the Police Post Tengpora appointed an officer for inspection of the said shopping line to avoid any mishap and the officer, who inspected the spot, found that the entire building has developed lot of cracks and the condition of the same is very bad. The assertions made in the compliance report filed by the respondent seem to be similar to that of assertions made in the writ petition.

04. Before going into the merits of the case, this Court, at its threshold stage, noticed that the instant petition is not maintainable and ought to have been dismissed on the sole ground that petitioner has not arrayed the Revenue Authorities as well as the tenants, against whom, the eviction is sought, as party-respondents as the controversy involved in the instant petition is purely civil in nature. On the other hand, only Police Authorities have been arrayed as party-respondents who have no role in determining the controversy raised in the petition, whose role is confined to the maintenance of law and order which is not the controversy in question.
05. It is settled position of law that the Police Authority should not interfere in civil disputes unless a criminal offence is involved. The primary duty of the police is to maintain law and order and civil disputes can be adjudicated by the competent courts having jurisdiction.
06. Heard petitioner at length and perused the material on record.
07. Admittedly, in the instant petition, the petitioner has projected his claim on the basis of a report dated 5th October, 2020,

submitted by a private Agency i.e., Structural Engineering Company, by virtue of which, the petitioner also filed a complaint before the respondent no. 3 i.e., SHO, Police Station, Batamaloo, Srinagar, who has no competence to deal with such complaint as the dispute raised between the petitioner/landlord and tenants is purely civil in nature. The report submitted by the aforesaid company has also no relevance in the eyes of law and cannot be acted upon.

08. Moreover, the report submitted by the aforesaid private Structural Company has been procured by the petitioner on his own without any explicit direction from any Government Agency and the said report has no legal sanctity in the eyes of law and cannot be relied upon.
09. Additionally, police have no jurisdiction to intervene in disputes that are purely civil in nature, including those arising between landlord and tenant. Such matters are within the exclusive cognizance of competent courts and fall outside the scope of criminal law enforcement agencies i.e. police. The petitioner, in order to evict the tenants from the said shops has applied pressure tactics by filing the said complaint before the SHO concerned by projecting that the structure in question has developed some cracks, which may fall down and cause severe damage to the goods/materials lying inside the shops and even to the human lives.
10. From the perusal of the record, it further transpires that what the petitioner could not achieve directly is being sought to be achieved indirectly by the medium of instant petition, which is

misconceived and is liable to be dismissed. Even otherwise also, the instant petition is not maintainable as the petitioner has only impleaded the Police Authorities as party respondents and not the tenants or the competent authority, authorized to give such report of building being unsafe and being necessary parties.

11. The petitioner, in the first instance ought to have approached the appropriate authority appointed by the Government for declaration of such building as unsafe and subject to the opinion of that authority, the further course of action could have been taken.
12. The petitioner, instead of approaching the concerned authority has rushed to the Police Station with a motive to evict the tenants from the shops in question without arraying them as party respondents in the instant petition. This act of omitting the tenants as party respondents in the instant petition on the part of petitioner seems to be intentional and not in consonance with the law. A landlord cannot approach the police authority i.e. SHO concerned to directly evict tenants. Eviction is a civil matter that requires an order from the competent court of jurisdiction which has not happened in this case. The police can assist in executing a court order for eviction, if there is such direction by the competent court and not otherwise and the police agency cannot initiate the process or remove tenants without legal mandate.
13. Moreover, this petition fails to disclose any infringement of public law rights or any public law element that would warrant

the exercise of this Court to exercise writ jurisdiction under Article 226 of the Constitution of India.

14. The Hon'ble Supreme Court in a case titled as ***Shalini Shyam Shetty vs. Rajendra Shankar Patil, reported in (2010) 8 SCC 329***, has opined that property disputes or disputes between landlord and tenant should not be adjudicated in a proceeding under Article 226. The Court also warned against entertaining applications under Article 227 presenting them as writ petitions.

The relevant paragraph is reproduced below:

57. Therefore, a private person becomes amenable to writ jurisdiction only if he is connected with a statutory authority or only if he/she discharges any official duty.

58. In the instant case none of the above features are present, even then a writ petition was filed in a pure dispute between landlord and tenant and where the only respondent is the plaintiff landlord. Therefore, the High Court erred by entertaining the writ petition. However, the petition was dismissed on merits by a rather cryptic order.

59. It has repeatedly been held by this Court that a proceeding under Article 226 of the Constitution is not the appropriate forum for adjudication of property disputes or disputes relating to title. In Mohd. Hanif v. State of Assam, a three-Judge Bench of this Court, explaining the general principles governing writ jurisdiction under Article 226, held that this jurisdiction is extraordinary in nature and is not meant for declaring the private rights of the parties. (See SCC p. 786, para 5 of the Report). In coming to the aforesaid conclusion in Hanif, this Court referred to the Constitution Bench decision in T.C. Basappa v. T. Nagappa.

60. Following the aforesaid principles in Hanif, this Court in Hindustan Steel Ltd. v. Kalyani Banerjee held that serious questions about title and possession of land dealt with by writ court. In formulating these principles in Banerjee, this Court relied on the Constitution Bench

decision in Sohan Lal (see SCC p. 282, para 16 of the Report)

15. This Court is also fortified by the view taken by the Hon'ble Supreme Court in ***Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728***, wherein it has been held that writ jurisdiction is primarily intended to secure public law remedies and is not to be invoked for the adjudication of private contractual disputes, especially where such disputes involve the resolution of factual issues and are governed by a complete and adequate statutory remedy. The relevant paragraph is reproduced below:

55. Law in this aspect has developed through catena of judgments of this Court and from the reading of these judgments it would follow that in pure contractual matters the extraordinary remedy of writ under Article 226 or Article 32 of the Constitution cannot be invoked. However, in a limited sphere such remedies are available only when the non-Government contracting party is able to demonstrate that it is a public law remedy which such party seeks to invoke, in contradistinction to the private law remedy simpliciter under the contract. Some of the case law to bring home this cardinal principle is taken note of hereinafter.

16. Since, the petitioner in the instant petition instead of resorting to the procedure envisaged under law before the competent court, has chosen a novel method of filing the instant petition with a view to oust the tenants from tenancy by applying pressure tactics through the agency of the police and that too without arraying them as party-respondents which is not permissible under law.

17. For the forgoing reasons, the instant writ petition is devoid of any merit being misconceived and the same is, accordingly, dismissed. However, the dismissal of the instant petition shall not come in the way of petitioner to seek appropriate remedy under law.
18. Interim direction, if any, shall stand vacated.

SRINAGAR:
06.06.2025
"Shamim Dar"

