

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

**WP(C) No. 3035/2025
CM No. 8118/2025**

*Reserved on 05.12.2025
Pronounced on : 10.12.2025
Uploaded on: 10.12.2025*

- 1) **Farooq Ahmad Shiekh aged about 45 years.**
- 2) **Showkat Ahmad Shiekh aged about 39 years**
- 3) **Ghulam Mohi ud Din Shiekh aged about 53 years
All sons of Late Mohammad Rajab Shiekh
All residents of Surigam, Tehsil Lalpora
District Kupwara**

.....Petitioner(s)

Through: *Mr. R. A. Jan, Sr. Adv. with Mr. Syed Yahya, Adv.*

Versus

- 1) **Financial Commissioner (Revenue)/ Commissioner Agrarian
Reforms
Kashmir, Srinagar.**
- 2) **Additional Commissioner Kashmir at Srinagar**
- 3) **Deputy Commissioner Kupwara**
- 4) **Tehsildar, Tehsil Lalpora District Kupwara**
- 5) **Ghulam Mohammad Shiekh S/o Gh. Ahmad Shiekh**
- 6) **Waseem Akber Shiekh,**
- 7) **Arshad Ahmad Shiekh
Resptd. 6 & 7 sons of Late Mohammad Akber Shiekh
Resident of Surigam Tehsil Lalpora District Kupwara.**

.....Respondent(s)

Through: *Mr. Faheem Nissar Shah, GA
Mr. Sheikh Manzoor, Adv. for caveator
Mr. Ruaani Ahmad Baba, Adv.*

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

1. Heard learned counsel for the caveator. Caveat stands discharged.
2. The petitioners through the medium of the instant petition have called in question the orders dated 19.09.2025 passed by the Financial Commissioner, order dated 01.01.2025 passed by the Additional Commissioner, Kashmir and also the order dated 25.04.2024 passed by the Deputy Commissioner, Kupwara.
3. Briefly stated facts of the case are that the private respondents herein filed an application before the Deputy Commissioner Kupwara seeking removal of obstruction/encroachment on the public link road constructed by Rural Development Department. The Deputy Commissioner vide order dated 30.04.2024 directed the Tehsildar Lalpora to visit the spot and remove the obstruction/encroachments, if any, as per the law. The petitioners herein challenged the said order of the Deputy Commissioner in an appeal before the Divisional Commissioner Kashmir who transferred the same to the Additional Commissioner Kashmir (with powers of the Divisional Commissioner) for disposal. The Additional Commissioner Kashmir dismissed the appeal vide order dated 01.01.2025. The order of the Additional Commissioner Kashmir was again challenged, which was upheld by the Financial Commissioner vide order dated 19.09.2025. It is these orders of the Financial Commissioner, Additional Commissioner and Deputy Commissioner, Kupwara that are the subject of challenge in the present writ petition.

4. The core issue in the instant petition revolves around the alleged encroachment of a public pathway by the petitioners. The petitioners have specifically pleaded that the land in question forms part of their proprietary land under Khasra No. 1660 (11K 10M) of estate Surigam.
5. The record reveals that the private respondents have filed an application before the Deputy Commissioner, Kupwara on 07.10.2022 on the same subject matter and the Deputy Commissioner had directed the Block Development Officer (BDO) concerned to take appropriate action in the matter and the BDO concerned endorsed the report of Secretary Panchayat to Tehsildar concerned for appropriate action. From the said record it appears that report dated 15.04.2022 of the Secretary Panchayat that the link road, which is the subject matter of the instant petition has been constructed by the Rural Development Department under 14th Finance Commission Convergence Scheme during the year 2017-18. The report clearly mentions that the said link road has been encroached upon by the petitioners herein. Due to inaction in the matter, the private respondents approached the Deputy Commissioner in which order dated 25.04.2024 came to be issued which was impugned before the appellate court. The Tehsildar concerned in compliance to the aforesaid order constituted a team of revenue officials for spot visit and removal of the obstructions from the link road.
6. The record further reveals that it is only after the constitution of the team and the spot visit that the Tehsildar through order dated 09.07.2024 has removed the obstruction and filed a compliance report before the Deputy Commissioner.

7. The report dated 04.07.2025 of Tehsildar Lalpora in the matter was also considered by the Revisional Court which reveal that the Rural Development Department has executed the earth cutting work of the said pathway which falls under Khasra Nos.1673, 1675, 1678 and 1679 of estate Surigam. It is also reflected in the said report that portion of the pathway in question which had been blocked by the petitioners, falls under Khasra No. 1673 recorded as *Shamilat-deh maqbooza malikan*. The report further depicts that the proprietary land of the petitioners under Khasra No. 1660 is not linked with the present pathway dispute. As per the revenue extracts of Jamabandi 2016-17 and khasra Girdawari 2024 of estate Surigam, the khasra No. 1673 (06K 16M) is recorded in ownership column as *Shamilat--deh* & cultivation column as *maqbooza malikan*, with type of soil reflected as *banjar qadeem*. The petitioners have not recorded entry in the said land under khasra no. 1673.
8. Thus, from the bare perusal of the record which has been examined by this court, it can safely be concluded that the pathway/link road in question has been constructed by the Rural Development Department and subsequently, obstructed/encroached by the petitioners. The respondents being aggrieved by said obstruction approached the Deputy Commissioner Kupwara who by way of the impugned order directed the removal of the obstruction, if any. The order of Deputy Commissioner dated 25.04.2024 is clearly a remand order and the question of determination of encroachment or otherwise has been left to the concerned Tehsildar. The petitioners had adequate opportunity before Tehsildar/sub-ordinate revenue officials to present their case, when the spot visit and the demarcation took place.

9. The Revisional Court after going through the material on record, upheld the order of the Deputy Commissioner which was upheld by the Appellate Court as well.
10. Mr. R. A. Jan, learned Sr. Counsel has drawn the attention of this Court to the fact that the said road/pathway in question at Survey No. 1673 Min is recorded as Shamilat-e-Deh Maqbooza Malikan from last one year. The stand taken by the learned counsel for the petitioners has also been reiterated by the Deputy Commissioner, Kupwara in communication dated 14.03.2025 which for facility of reference is reproduced as under:

“The road/pathway in question had been blocked from last one year by Farooq Ahmad and Ors, Ss/o Rajab Sheikh at Survey No. 1673 Min which is recorded as ShamilatDeh Maqbooza Malikan.”

11. However, the record further reveals that with the same subject matter of the land and the pathway in question, a Civil suit i.e C.O.S No.83/2024 titled as Ghulam Mohammad Shiekh and others v/s Farooq Ahmad Shiekh and others for temporary injunction, has also been filed by the private respondents before the Court of learned Munsiff, Sogam Kupwara in which the court below has passed the order and has restrained the defendants from causing any interference into the pathway or making any encroachment over the pathway vide order dated 12.07.2024 and this aspect of the matter has been deliberately concealed by the petitioner, as the said order has not been placed on record nor referred in the petition.
12. Having heard learned counsel for the parties and perused the material on record, it clearly emerges that the matter was pending before the Civil Court and the Civil Court had already passed a restraint order dated 12.07.2024, whereby the petitioners were prohibited from causing any

interference with, or making any encroachment upon, the said pathway.

Once such an order was issued by a competent Civil Court, it was incumbent upon parties to adhere to it and pursue any grievance arising therefrom before the appellate court.

13. For the facility of reference, the order of Learned Civil court is reproduced as under:

“13. Therefore, issue notice in the application for filling objections and summons in the main suit for filing written statement, the defendants are restrained from causing any interference into the pathway or making any encroachment over the pathway, till next date of hearing. This order shall however be subject to the objections of other side they are at liberty to avail the remedy under Order 39 Rule 4 CPC. The plaintiffs shall comply with Order 39 Clause (A & B) needless to mention that the plaintiffs shall file service affidavit within statutory period.”

14. The order passed by the Civil Court was in active knowledge of the petitioners, yet the petitioners did not challenge the same before the superior court. Instead of availing the remedy available before appropriate court, the petitioners challenged all the orders passed by the revenue authorities before this court. However, the petitioners failed to contest the said order before the civil court in the hierarchy and has abandoned the said proceedings over there. The factum of passing the order passed by the civil court has been reflected by the revenue authorities in appeal as well as revision preferred by the petitioners. When the revenue authorities

decided against the petitioners, thereafter they invoked the extraordinary writ jurisdiction of this Court and questioned the orders passed by the Deputy Commissioner, Kupwara, the Additional Commissioner Kashmir, and the Financial Commissioner. This clearly shows that the petitioners have not followed the settled legal process and has tried to pursue the same issue before different forums and ultimately before this court by way of the instant petition

15. This Court is of the considered view that once a Civil Court had taken cognizance of the dispute, the petitioners by no stretch of imagination can have parallel proceedings simultaneously for the same issue before another authority. This court in the light of the law laid down in the case titled as **“Abdul Rashid Khan vs. UT of J&K and Ors. decided on 27.11.2025** has observed as under:

“In view of the above legal position, it becomes evident that the jurisdiction of the civil court is superior to, and overrides, that of the revenue authorities, particularly in matters concerning title, possession, or any civil rights in respect of immovable property. Once a civil suit is pending on the same subject-matter, the revenue authorities are expected to defer their proceedings so as not to prejudice or conflict with the adjudication before the civil court.”

16. It is well settled that the jurisdiction of Civil Court is superior and revenue authorities cannot adjudicate upon such issues when the same are already before a Civil Court. The principle against parallel proceedings is settled and revenue authorities are expected to lay their hands off when the same controversy is pending before the Civil Court.

17. In the present case, the petitioners' approach in seeking relief from revenue authorities, without first exhausting the remedies available before the Civil Court which had already taken up the matter and passed an order in relation to the dispute, cannot be ignored by this Court. Such conduct not only results in the multiple proceedings but also creates a risk of conflicting, inconsistent, or contradictory decisions being rendered on the same subject-matter.
18. Upon careful consideration of the material placed on record, it reveals that the petitioners have approached this Court after having suffered dismissal before both the appellate and revisional authorities. However, the petitioners have not placed on the record that a civil suit on the same subject matter is pending before the Civil Court and that an interim restraint order had already been passed on 12.07.2024. The passing of the Civil Court order was well known to the parties and had also been referred to in the orders of both the appellate and revisional authorities. This Court is of the considered view that such deliberate suppression of material facts, cannot be condoned by this court as the petitioners have not come to this court with clean hands and have tried to play fraud with this court to get an interim order more particularly when there was a restraint order against the petitioners for the same pathway. What the petitioners could not achieve directly is being achieved by fraud and indirectly by suppressing material facts and this court cannot shut its eyes to such a conduct on the part of the party seeking equitable right. Law of equity does not permit a party to secure indirectly what it is prohibited from claiming directly.

19. Although from the bare perusal of the writ petition, the petitioners have pleaded that initially the respondents have approached the Civil Court and were granted protection by virtue of interim order dated 29.10.2022 but petitioner have failed to give the details of the said proceedings before this court and have also not placed on record the interim order dated 29.10.2022 referred in the petition. Moreover, the petitioners have deliberately suppressed the order passed by the learned Munsiff Sogam dated 12.07.2024 in C.O.S.No.83/2024 titled as Ghulam Mohammad Shiekh and others vs. Farooq Ahmad Shiekh and others on the same subject matter.

20. This Court cannot overlook the deliberate and willful suppression of material facts by the petitioners. The petitioners, having suffered dismissal before both the appellate and revisional authorities, approached this Court without disclosing the pendency of a civil suit on the same subject matter, nor did they bring to the notice of this Court the passing of the interim order dated 12.07.2024 by the Learned Civil Judge/Munsiff Sogam restraining the petitioner from interfering with or encroaching upon the pathway. The fact that the Civil Court's order was already in existence and known to the parties, and had also been referred to in the orders of both the appellate and revisional forums, shows the concealment was deliberate and wilful.

21. Such deliberate concealment is wholly unacceptable in the eyes of the law. The petitioners, in approaching this Court, have sought to obtain relief by withholding the most crucial facts, thereby misusing the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

22. The Hon'ble Supreme Court as well as various High Courts in a catena of Judgments consistently held that parties who approach the court is required to make a full and fair disclosure of material facts. Suppression of material facts amounts to abuse of process of law and disentitled parties from invoking discretionary power under Article 226 of the Constitution.
23. The Hon'ble Supreme Court in case titled as **In Prestige Lights Ltd. v. State Bank of India, reported as 2007 (8)SCC449** has held as under:

“The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.”

24. Further, this Court in case titled as **Satpal Sharma vs. State of J&K and others**, has held that:

“64.Thus, from the aforementioned enunciations of law, it has been settled that suppression of any material fact amounts to abuse of the process of law and playing fraud, which would deprive an unscrupulous litigant from availing equitable or discretionary remedies under [Article 226](#) of the Constitution of India. In the instant case, the petitioners, with a view to mislead this Court, have deliberately suppressed the fact that the demolition over the land of the petitioners was already carried out by the JDA before filing the instant case, which fact has been admitted by the petitioners in three separate c/w applications filed under [Section 156\(3\)](#) of Cr.P.C and also in the petition filed under Section 561-A of J&K [Cr.P.C.](#) by the petitioners. In these circumstances, the

petitioners are not entitled to claim the discretionary remedy/relief available under [Article 226](#) of the Constitution of India.

65. The petitioners have deliberately suppressed the fact that the demolition on their land had already been conducted on 30.09.2018 and the same was in their active knowledge, yet the petitioners with a view to mislead this Court twisted the facts and projected a contradictory stand in the instant petition which lead to the passing of status quo order in HIGH COURT OF JAMMU & KASHMIR AND LADAKH their favour. Thus, it is clear that the petitioners have abused the process of law and concealed material facts and accordingly, this Court is of the view that this is a fit case, where cost is required to be imposed on the petitioners for their conduct.

25. In these circumstances, it is manifestly clear that the revenue authorities should not have proceeded with the same issue which was subject matter of the civil suit that was pending before the learned Munsiff Court Sogam. The orders passed by the Deputy Commissioner, Additional Commissioner, and Financial Commissioner cannot be sustained. The law does not permit parties taking conflicting routes to achieve the same objective, particularly in cases, where the matter is directly and substantially in issue before a competent civil court.

26. Thus it is evident that the petitioner has approached this Court with unclean hands. The order dated 12.07.2024 passed by the Civil Court was deliberately concealed by the petitioners. By doing so, the petitioners have sought to mislead this Court. Such conduct amounts to abuse of the Court's process and cannot be permitted.

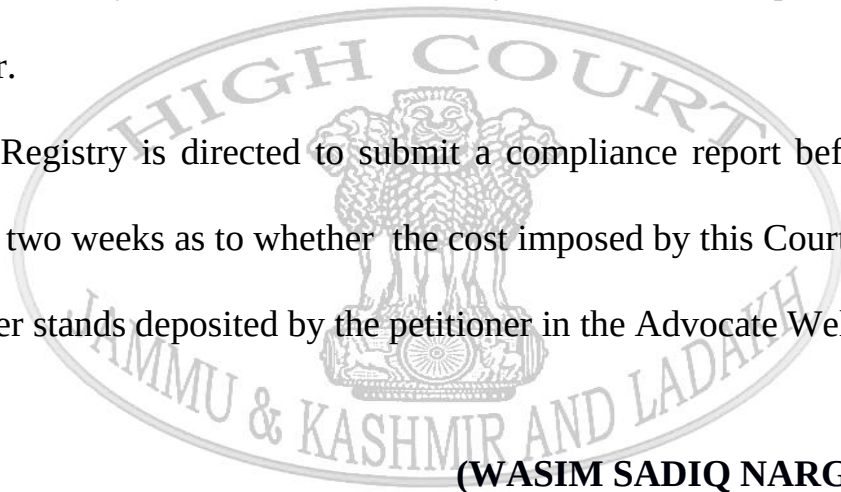
27. Accordingly, with a view to deprecate such practice of suppression of material facts, this Court imposes a cost of Rs.50,000/- on the petitioners, to be paid jointly by them, within a period of two weeks from the date of

pronouncement of this order, which is to be deposited in the Advocates' Welfare Fund of this Court.

28. In view of the above, the writ petition which is devoid of any merit, is dismissed. The imposition of costs is to maintain the sanctity of the judicial process and to ensure that no party approaches the Court while suppressing material facts.

29. Further, petitioners are relegated to the Civil Court for redressal of their grievances where the subject matter of the same issue is pending and the Civil Court is directed to proceed with the matter on merits without being influenced by the observation made by this Court while passing the instant order.

30. The Registry is directed to submit a compliance report before this court after two weeks as to whether the cost imposed by this Court in the instant matter stands deposited by the petitioner in the Advocate Welfare Fund.



(WASIM SADIQ NARGAL)
JUDGE

Srinagar
10.12.2025
Sakeena-PS

i. Whether the Judgment is Reportable: Yes/No

ii. Whether the Judgment is Speaking : Yes /No