

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

**WP (C) No. 1760/2022
CM No. 4324/2022**

Reserved On: 8th of April, 2026.

Pronounced On: 22nd of April, 2026.

Uploaded On: 22nd of April, 2026.

Whether the operative part or
full Judgment is pronounced: **Full.**

1. **Ghulam Nabi Bhat**, Age: 60 Years
2. Tariq Ahmad Bhat, Age: 48 Years
3. Hilal Ahmad Bhat, Age: 46 Years
4. Farhan Sami-Ullah Bhat, Age: 42 Years

All Sons of Late Gh. Mohd. Bhat

R/O Iqbal Colony, Sonawar, Srinagar.

... Petitioner(s)

Through: -

Mr Bhat Fayaz Ahmad, Advocate with
Ms Nighat Amin, Advocate.

V/s

1. **Union of India through Secretary Defence**,
Government of India, New Delhi.
2. Principal Director, Defence Estates,
Northern Command, Jammu.
3. Cantonment Board, Badami Bagh, Srinagar
Through Defence Estate Officer,
Kashmir Circle Srinagar.
4. Chief Executive Officer, Cantonment Board,
Badami Bagh, Srinagar.
5. Deputy Commissioner, Srinagar.
6. Assistant Commissioner (Revenue), Srinagar.
7. Tehsildar (South), Srinagar.

... Respondents

Through: -

Mr Tahir Majid Shamsi, DSGI with
M/S Faizan Ahmad Ganie, CGC & Beenish, Advocate for R-1 & 2; and
Mr Bikramdeep Singh, CGC/ Dy. AG for R-3 to 7.

CORAM: HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(JUDGMENT)

01. The Petitioners, through the medium of the present Petition filed under Article 226 of the Constitution of India, have challenged Order dated 8th of August, 2022 issued by the Estates Officer, Cantonment Board under sub-section (2) of Section (5A) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 [for short "the Act of 1971"]. Besides, the Petitioners seek a direction in the name of the Respondents, thereby directing them to desist from invoking the Act of 1971 in order to dispossess the Petitioners from their proprietary land in future and not to remove the existing structures of the Petitioners raised on the proprietary land falling under Survey No. 176/165 situate at Mozai Bonamsar, Sonawar, Srinagar.

02. The Petitioners claim to be in continued possession of land falling under Khasra No. 176/165 situate at Bonamsar, Sonawar, Srinagar, prior to the year 1950. It is pleaded that in the year 2003, the Respondent-Cantonment Board started causing interference in the peaceful possession of the land of the Petitioners measuring 06 Marlas and 06 Sirsai located at Bonamsar, Sonawar, Srinagar, which constrained the Petitioners to move the Civil Court seeking restraint against the Respondents with respect thereto, wherein the Civil Court decreed the Suit in favour of the Petitioners and restrained the Cantonment Board from causing any interference in the possession of the Petitioners, with a further direction that the Decree, however, shall not affect the action under the provisions of the Cantonment Act; that in terms of the Judgment of the Civil Court, the rights of the Petitioners have been determined after considering the Written Statement filed by the Respondent-Cantonment Board in which the Respondents submitted that the land in question is classified as B4 land (Defence Land); that, in May, 2022, the Respondents issued a show cause notice to the Petitioners in terms of sub-section (2) of Section 4 of the Act of 1971

alleging therein that the Petitioners are encroachers of the Cantonment land and, accordingly, directed them to submit evidence which the Petitioners would intend to produce in support of their case; that in response to the aforesaid show cause notice, the Petitioners submitted all the relevant documents in order to satisfy the Respondents that the land in question is their proprietary land and that there is no question of encroachment of any Defence Land; and that, instead of considering the reply so submitted by the Petitioners to the show cause notice, the Respondents have issued the impugned Order under sub-section (2) of Section (5A) of the Act of 1971, directing the Petitioners to remove the structures /fixtures on the said premises falling under their Survey No. 40/6 instead of 176/165 as per UT Revenue record, within 15 days from the date of publication of the Order impugned.

03. Objections stand filed on behalf of all the Respondents.

04. In their Objections, the Respondent-Union of India (Respondents No. 1 and 2) have averred that the instant Petition raises disputed questions of facts which cannot be adjudicated in Writ proceedings, as such, the Writ Petition is liable to be dismissed; that the Petitioners have encroached Defence Land measuring 1805.31 Sqft bearing GLR Survey No.40/6 classified as B-4 land under the management of Cantonment Board, Badamibagh; and that the entries made in General Land Register maintained under Cantonment Land Administration Rules are conclusive evidence of title, as such, the land in question comprised under GLR Survey No.40/6, classified as B-4 land, is defence land under the management of Cantonment Board, Badamibagh, Srinagar.

05. The Respondent-Cantonment Board (Respondents No. 3 and 4), in their Objections, have submitted that the Petitioners have succeeded in encroaching Government/ Défense Land situated at Sonawar, Srinagar measuring 1805.31 Sqfts bearing Survey No. 40/6 in GLR which is classified as B-4 land recorded in the GLR (General Land Register) maintained by the Respondents; that the Petitioner is making a claim under

Survey No. 176/165, whereas, the notice has been issued with respect to Survey No. 40/6, therefore, the claim raised by the Petitioners is devoid of any merit, as such, deserves to be rejected; and that the Decree passed by the Civil Court will not clothe the Petitioners to be encroachers and restrain the Respondents from taking recourse to law for evicting the Petitioners.

06. The Union Territory of J&K (Respondents No. 5 to 7), in their Reply, have submitted that as per the report of the Tehsildar, Srinagar, South dated 24th of January, 2023, the Survey No. 176/165 in Estate Bonamsar is the proprietary land as per revenue records of ROR 1977 *Bikrami*, *Jamabandi* of 1967-68 and *Jamabandi* of 2005-06, however, the land has been transferred by virtue of sale deed vide mutation No. 294 in the name of Ghulam Mohammad, the father of the Petitioners, for land measuring 04 Marlas and 04 Sirsai; and that the property falling under Survey No. 176/165 measuring 04 Marlas and 04 Sirsai has devolved in the name of the Petitioners by virtue of inheritance Mutation Order No. 672 (Ghulam Nabi and Ors).

07. The Union Territory of J&K, thereafter, have also filed a Supplementary Reply, wherein it has been stated that the Tehsildar, Srinagar, vide communication No. TSS/OQ/330/23 dated 10th of May, 2023, submitted that the Patwari Halqa, Bonamsar has reported that due to oversight, Khewat No.81 was not mentioned in the previous report and the same has led the answering Respondents to file the Supplementary Reply, so as to supplement the report that land measuring 02 Marlas and 122 Sfts, falling under Khasra No. 453/380/176/165, Khewat No.81, has been transferred in the name of the Petitioners by way of a Court decree vide Mutation Order No. 669.

08. Learned Counsel for the Petitioners submits that the Petitioners are the owners in possession of the land in question based on the sale deeds with regard to land in question measuring 06 Marlas and 06 Sirsai comprising of Survey No. 40/6 and that the Petitioners have been declared so in a Civil Suit vide an *ex-parte* Decree dated 27th of December, 2006

passed by the Court of learned 1st Additional Munsiff, Srinagar in a case titled '**Ghulam Nabi Bhat & Ors. v. Cantonment Board & Anr.**' and that all the revenue documents like *Jamabandi* and *Khasra Girdawari* are in favour of the Petitioners evidencing that the land is the proprietary land of the Petitioners. He has further argued that, instead of challenging the aforesaid *ex-parte* Decree passed against the Respondents No. 3 and 4 (Cantonment Board, Badami Bagh, Srinagar), the Respondents have now issued the impugned notice/ Order, asking the Petitioners to vacate from the land in question, which is illegal, particularly in the face of the fact that the Petitioners are owners of the land in question and cannot be divested of their human/ constitutional right of holding the property without following due course of law. It was finally prayed that the impugned notice/ Order be quashed.

09. Mr Tahir Majid Shamsi, the learned Deputy Solicitor General of India (DSGI), appearing for Respondents No. 1 and 2, at the very outset, submits that the reliance of the Petitioners over an *ex-parte* Decree against the Cantonment Board is not binding on the Defence-Department, inasmuch as, the land in question is under the ownership of the Defence and the Cantonment Board is merely an agency to administer its affairs, like a local body, as such, the Decree cannot be enforced against the Respondents No. 1 and 2, who are owners of the land in question. He has further argued that the land in question has been notified as B-4 under the General Land Register (GLR) which has precedence over any other official record, therefore, the land in question having been recorded in the General Land Register (GLR) cannot be claimed by the Petitioners. The learned Deputy Solicitor General of India has also argued that disputed questions of fact have been raised in this Petition which cannot be determined under Writ jurisdiction by this Court and prayed that the Petition be dismissed.

10. Mr Bikramdeep Singh, learned CGC/ Deputy Advocate General, appearing for Respondents No. 3 to 7, has also argued that the land in question has been a vacant Defence land described as B-4 and recorded

in the General Land Register (GLR) cannot be claimed by the Petitioners. He has further submitted that the General Land Register (GLR) is a record of transfer of land from the earlier State Cantonment Board during the Maharaja's time which was later transferred to the Union of India for setting up of the Cantonment Board at Badami Bagh, Srinagar. He also submits that the disputed questions of fact have been raised in this Petition which cannot be decided by this Court under Writ jurisdiction.

11. Heard learned Counsel for the parties, perused the pleadings on record and considered the matter.

12. From the perusal of the pleadings available on record and having regard to the submissions made by the learned Counsel for the parties, it crystalizes that the land in question which has been claimed by the Petitioners, as owners thereof, is stated to be in the revenue records maintained by the Union Territory of Jammu & Kashmir having been transferred to the Petitioners on the strength of some sale deed and mutated in their favour, however, the Respondents have disputed the said fact by stating that the land in question has been described as B-4, i.e., vacant Defence land, having been recorded in the General Land Register (GLR) and being administered by the Badami Bagh, Cantonment Board, Srinagar. It is, thus, evident that both the parties have laid separate claims with regard to the land in question, particularly with regard to description of land under Survey No. 176/165 as claimed by the Petitioners and Survey No. 40/6 as claimed by the Respondents No. 1 to 4, as such, disputed questions of fact are involved in the instant Petition with regard to the title of the land in question.

13. Given the above circumstances, the question that arises herein this case is whether the Cantonment Board was entitled to initiate proceedings against the Petitioners herein under the Act of 1971, being summary in nature.

14. The law is that the summary remedy for eviction, as is provided under the Act of 1971, can be resorted to by the concerned

Authority only against the persons who are in unauthorized occupation of any land which is the property of the Government and, if there is a *bona fide* dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and, on the basis of such decision, take recourse to the summary remedy provided by the Act of 1971 for evicting the person who is in possession of the property under a *bona fide* claim or title.

15. The summary remedy prescribed by the Act of 1971 is not the kind of legal process which is suited to adjudication of complicated questions of title. The questions of fact which raise a *bona fide* dispute of title between the Government and the occupant must be adjudicated upon by the ordinary courts of law and the Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. Moreover, duration of occupation in such circumstances is also relevant in the sense that a person, who is in occupation of a property openly for an appreciable length of time, can be, *prima facie*, taken to have a *bona fide* claim with respect to the property requiring an impartial adjudication according to the established procedure of law.

16. Reference, in this behalf, can be had to the law laid down by the Hon'ble Supreme Court in case titled '**Government of Andhra Pradesh v. Thummala Krishna Rao & Anr.**', reported as '**(1982) 2 Supreme Court Cases 134**', wherein the Hon'ble Supreme Court has held that, on the basis of disputed questions of fact regarding title of a property, the summary proceedings are not the due process of law for evicting the occupants of such property. Again, in '**State of Rajasthan v. Padmavati Devi & Ors.**', reported as '**1995 Supp (2) Supreme Court Cases 290**', the Apex Court held that summary procedure for eviction of unauthorized occupants of Government Land cannot be invoked where a person in occupation raises *bona fide* dispute involving complicated questions of title and his right to remain in possession of the land and that, in such a case, the

proper course is to have the matter adjudicated by the ordinary courts of law.

17. Keeping in view the above settled legal position on the subject and coming to the case on hand, the Petitioners are claiming title and possession over the subject property through their predecessors-in-interest from the year 1950, whereas, the Respondents claim the subject land is Government/ Defense land which has been encroached upon by the Petitioners. In such a situation, having regard to the above referred legal position, unless they establish their title through competent Civil Court, the Respondents are not entitled to initiate and pass the eviction order exercising the powers conferred under the Act of 1971, which is summary in nature, thereby rendering the same without jurisdiction.

18. Apart from the above, the next issue that arises herein in this case is that the Petitioners claim that the land in question was purchased by their predecessor-in-interest in terms of a registered sale deed 3rd of June, 1971. It is apt to point out here that in respect of a registered sale deed, the well settled proposition of law lays down that a registered sale deed carries a formidable presumption of validity and genuineness and that the burden of proof to displace this presumption rests heavily upon the challenger, requiring material particulars and cogent evidence to demonstrate that the deed was never intended to operate as a *bona fide* transfer of title. This view is fortified by a latest judgment rendered by the Hon'ble Supreme Court in case titled '**Hemalatha (Dead) by LRs v. Tukaram (Dead) by LRs & Ors.**', reported as '**2026 LiveLaw (SC) 79**'.

19. Now, coming to the contention of the Respondents that there is a statutory presumption in favour of the entries in the General Land Register (GLR), which are prepared by the authority in day-to-day administration, it needs to be observed that the Respondents, who are asserting their title over the subject land, have not produced any document of title pertaining to the said land. The Respondents having failed to show any specific document which would show that they were the absolute

owners of the land and, instead, have relied upon the entries in the General Land Register (GLR).

20. The General Land Register (GLR) is not prepared after issuing any notification calling for the objections from the interested persons, as in a case relating to the provisions of the Land Revenue Act and the Record of Rights in Land Regulations. There is no wide publicity given and none is heard before making such entries in the General Land Register (GLR). Where a record is prepared by a public servant and such record affects the persons who have no opportunity to object to the same, such record does not carry any probative value. The principles of natural justice are required to be complied with by the public servants in the matter of preparation of any documents, which may have a tendency of adversely affecting the rights of the private citizens. Only such documents prepared after due notice and hearing of all the concerned shall be deemed to be made by a public servant in the discharge of his official duty within the meaning of Section 35 of the Indian Evidence Act. The General Land Register (GLR), as such, cannot be said to be prepared and maintained in respect of the rights in or over the land. The same, at best, can be equated to that of the land record relating to survey for revenue purposes and record of rights. The entries made therein cannot have any effect of superseding the entries in the Survey and Settlement Register and the Record of Rights prepared and maintained under the provisions of the Land Revenue Act. The General Land Register and the entries made therein, at the most, can be construed as a record maintained by the Defence Estate Officer for its own purposes.

21. For the foregoing reasons, the instant Petition is **allowed** and the impugned Order dated 8th of August, 2022 is set aside. The Respondents, however, shall be at liberty to approach the competent Civil Court to establish their title over the subject property and also to initiate proceedings under the Act of 1971 for unauthorized occupation of the property after obtaining declaration from appropriate Court as to their ownership of the subject property, if they so choose.

22. Writ Petition is, thus, **disposed** of on the above terms, along with the connected CM.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

April 22nd, 2026

"TAHIR"

- i. Whether the Judgment is approved for reporting? **Yes.**

