
(2008) 06 J&K CK 0008
In the Jammu And Kashmir High Court

Mohammad Afzal Bhat and Others	APPELLANT
Vs	
State of Jammu & Kashmir and Others	RESPONDENT

Date of Decision : 03-06-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of Jammu and Kashmir, 1956 — Section 103

Citation : (2008) 3 JKJ 66

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—The writ petitioners have invoked the jurisdiction of this Court in terms of Article 226 of the Constitution of India

read with Section 103 of J&K State Constitution, for issuance of appropriate writ, order or direction on the following grounds;

2. That the petitioners are owners in possession of 5 marlas of land falling under survey No. 3367/438 and 349/4382 and 10 marlas under survey

No. 3373/1419 situated at Brinal Lamad Tehsil and District Kulgam. One walnut tree owned by the petitioner No. 3 is standing in the survey No.

3373/1419. The official respondents are proposing to construct a latrine on the land of the petitioner No. 3. further, it is averred that petitioners are

entitled to ownership in terms of Jammu & Kashmir State Lands (Vesting of Ownership Occupants) Act, for short 'Act'.

3. The petitioners have prayed for the following reliefs:

I. Mandamus, commanding thereby respondents not to construct the public latrine over the piece of land falling under survey Nos. of Annexure: A

& B owned and possessed by the petitioners.

II. Mandamus, commanding thereby respondents not to allow the Rural Development Department to go for construction of the public latrine in

village Brinal Lamad over the land owned and occupied by the petitioner No. 3 by changing the proposal to get it constructed some-where-else.

III. Mandamus, commanding thereby respondents to declare the petitioner No. 3 to be the owner of the land falling under survey No. 3373/1419

to the extent of 10 marlas by receiving compensation from him in terms of Roshni Scheme.

IV. Mandamus, commanding thereby respondents to change their proposal by constructing the public latrine some-where-else instead of over and

near the land of the petitioners. Any other writ, order or direction which this Hon'ble Court may deem just and proper in the circumstances of the

case though not prayed for be also passed in favour of the petitioners and against the respondents.

4. Respondents resist the petition on the ground of jurisdiction and maintainability. Learned Counsel for the officials respondents 1 to 7, stated that

this petition merits to be dismissed only on the ground that disputed questions of fact are involved and the land mention of which is made in the writ

petition is State land and is being used for latrine purpose and this Court cannot direct the respondents to construct latrine at any particular place.

5. In terms of annexures A and B, the land in question is 'Banjri Qadeem' and 'Abaadi Deh' and the petitioners are neither shown in the ownership

column nor in the possessory column. As per the entries reflected in the annexure-B pertaining to survey No. 3373/1419, the petitioners are

neither recorded in ownership column nor in possessory column. However, Patwari has made a note at the bottom of the 'Khasra Girdawari' that

one walnut tree in possession of petitioner No. 3 is standing on the said survey number. Whether petitioners are owners or possessors is a matter

to be gone through by competent court of jurisdiction. And whether they are entitled to any relief in terms of the Act is also dependent on the fact

whether petitioners are in possession.

6. All the said questions are questions of fact which cannot be gone through by this Court in its writ jurisdiction.

7. It is for the State/Administrative Authority to decide where to construct latrine. It is an executive decision cannot be questioned by any person.

In the given circumstances, no case for admission is made out. Accordingly, the writ petition is dismissed along with all connected CMPs. Interim direction dated 17.11.2007 vacated.