

**IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR.
WP(C) 2274/2021
CM (7336/2021)**

*Reserved on: 10.07.2025
Pronounced on: 30.07.2025*

**Panchayat Halqa Tappar Pattan, Baramulla,
Kashmir through its Panch
Bashir Ahmad Bhat aged 60 years
S/O Abdul Rehman Bhat R/O: Tapper Varipora,
Pattan, Baramulla, Kashmir.**

Through: Mr. Asif Bhat, Advocate with
Ms. Azra Bhat, Advocate

...Appellant(s)/Petitioner(s)

Vs.

- 1. Union Territory of Jammu and Kashmir
through Commissioner – Secretary, Animal
& Sheep Husbandry Department, Civil
Secretariat, Srinagar**
- 2. Director Animal Husbandry Department,
Kashmir, Srinagar**
- 3. Director, Sheep Department, Kashmir,
Srinagar**
- 4. Executive Engineer, R&B Division Baramulla
Kashmir**

Through: Mr. Faheem Nisar Shah, GA

...Respondent(s)

CORAM:

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

PRAYER

1. The instant writ petition has been filed on behalf of the petitioners,
praying for the following reliefs:-

*“a) Any writ order or direction including a writ in the
nature of certiorari quashing the impugned tender
notice e-NIT No.118/8497-8506/2021-22/RnB/Bla
dated 16.10.2021, issued by respondent No.3 to the
extent of serial No.1 & 2 vis-à-vis for construction of
building for Veterinary Centre at Buchoo Block*

Pattan & construction of Sheep Extension Centre at Tapar Bala/ TapparWaripora, Pattan.

b) By issuance of mandamus commanding upon the respondents from raising any kind of construction over the Kachari-i-Land, without the consent and approval of concerned panchayat i.e. petitioner.

c) Any other order or direction which this Hon'ble court may deem, fit and proper may also be passed favouring petitioners and against the respondents, albeit not prayed for."

FACTUAL MATRIX OF THE CASE

2. The present writ petition has been filed by Panchayat Halqa Tapper Pattan, represented through one of its elected Panchs, pursuant to a resolution passed by all members of the Halqa Panchayat authorizing the institution of legal proceedings. The petition is filed against the issuance of e-NIT No.118/8497-8506/2021-22/RnB/Bla dated 16.10.2021, issued by Respondent No.3, whereby tenders were invited for various works, including the construction of a Veterinary Centre at Buchoo Block, Pattan, and a Sheep Extension Centre at Tapar Bala/TapparWaripora, Pattan.
3. The petitioner contends that the issuance of the impugned tender was undertaken unilaterally by the respondents, without any consultation with or involvement of the concerned Halqa Panchayat, thereby violating the provisions of the *Jammu & Kashmir Panchayati Raj Act, 1989* and the Rules framed thereunder. In particular, reliance is placed on Sections 4, 12 and 13 of the Act, and Rules 48 and 49, which mandate the Panchayat's role in identifying and approving developmental works within its jurisdiction.
4. It is further alleged that the proposed site for the Sheep Extension Centre at Tappar Waripora falls on land classified as *Kacharai land* traditionally used as common grazing land for village inhabitants. The petitioner submits that such land vests in the Panchayat and cannot be utilized for any other purpose without express consent, acquisition proceedings, and due process of law. Revenue extracts relied upon by the petitioner are stated to reflect the status of the land as Kahcarai.
5. The grievance of the petitioner is not against the terms or competitiveness of the tender process per se, but rather the process by which it was initiated, which allegedly bypassed statutory mandates and the constitutionally

recognized role of Panchayats in grassroots governance. It is contended that this exclusion strikes at the core of the decentralization framework envisaged under *Part IX* of the Constitution, introduced by the 73rd Constitutional Amendment.

6. In support of its submissions, the petitioner places reliance on several authorities and directives, including the judgment of the Hon'ble Supreme Court in ***Jagpal Singh v. State of Punjab (2011) 11 SCC 396***, wherein the Apex Court directed all States and Union Territories to evict illegal occupants from village common lands and restore the same to the Gram Panchayats for community use. The petitioner also cites two key administrative directives in form of Government Order dated 29.09.1979, discouraging the acquisition of Kacharai land for non-essential purposes, and Circular dated 09.12.2010 issued by the Financial Commissioner (Revenue), which categorically barred processing of any cases regarding allotment or transfer of Kachari land.
7. The respondents, in opposition to the petition, raised a preliminary objection regarding its maintainability, by projecting that it was filed in a representative capacity without the requisite leave of the Court. They further submit that the resolution authorizing the Panch was limited in scope to protecting Kacharai land and did not extend to challenging the tender process or alleging violations of the Panchayati Raj framework.
8. On merits, the respondents deny that the land in question is Kacharai and assert that it is recorded in official revenue records as *Sarkar land* (government land) and the use of State land is for public infrastructure as such veterinary and sheep extension facilities does not require Panchayat approval and is consistent with lawful administrative functioning.
9. The respondents also contend that no individual or fundamental right of the petitioner has been violated. Further contention of the respondents is that the tender process was carried out in accordance with applicable norms, and the petition fails to demonstrate any arbitrariness, mala fides, or illegality warranting judicial interference.
10. In rejoinder, the petitioner reiterates that the land is indeed Kacharai, and the Panchayat, as custodian of village commons, has both a statutory and constitutional stake in ensuring that such lands are not diverted without compliance with the law.

SUBMISSIONS ON BEHALF OF THE PETITIONER

11. Learned counsel appearing on behalf of the petitioner submits that the issuance of the impugned tender notice dated 16.10.2021, bearing e-NIT No.118/8497-8506/2021-22/RnB/Bla, by Respondent No.3, is illegal, arbitrary, and unsustainable in law. It is contended that the tender pertains to the construction of a Veterinary Centre at Buchoo Block, Pattan, and a Sheep Extension Centre at Tapar Bala/TapparWaripora, Pattan, on land that is classified as Kacharai land, which by law vests with the Panchayat for common grazing purposes and cannot be diverted without due process.
12. It is submitted that the tender was floated without any consultation or intimation to the Halqa Panchayat, thereby violating the mandate of the J&K Panchayati Raj Act, 1989, particularly Sections 4, 12, and 13, and Rules 48 and 49 of the 1996 Rules framed thereunder. These provisions emphasize the central role of Panchayats in planning and executing developmental activities at the village level.
13. The petitioner further submits that the revenue extracts (Annexure-III) clearly reflect the land in question as Kacharai, and as such, its use for construction of government buildings is contrary to Government Order dated 29.09.1979 and Circular dated 09.12.2010, which explicitly bar acquisition or transfer of Kacharai land except for minimal and essential public purposes such as schools or dispensaries.
14. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Jagpal Singh & Others v. State of Punjab & Others*, (2011) 11 SCC 396**, wherein the Apex Court issued directions for restoration of village common lands to the Panchayats and emphasized that illegal or unauthorized use of such land, even for public purposes, must follow due process including notice, hearing, and acquisition.
15. It is also argued that the spirit of the 73rd Constitutional Amendment, particularly Article 243G, guarantees the devolution of powers to Panchayati Raj institutions and empowers them to safeguard and manage local resources, including village commons. The action of the respondents, by excluding the Panchayat from the decision-making process and bypassing its statutory functions, defeats the constitutional scheme of participatory local governance.

16. In light of the above, it is submitted that the respondents may be restrained from proceeding with any construction on Kacharai land without the prior approval and consultation of the Panchayat, and the impugned tender may be quashed to the extent it relates to the disputed land.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

17. *Per contra*, learned counsel for the respondents submits that the land in question is not Kacharai land, as claimed by the petitioner. The revenue records, which form part of the respondents' reply, show that the land is classified as Sarkar (state-owned) land. Accordingly, there exists no legal impediment to the utilization of such land for public infrastructure projects, and the requirement of consultation with the Panchayat does not arise in the case of government land.

18. The respondents have further pleaded that no legal or fundamental right of the petitioner has been violated. The impugned tender was issued following a transparent and lawful process to facilitate rural development and strengthen veterinary and livestock services in the area. The petitioners have not raised any allegations of mala fide, bias, or procedural irregularity in the tender process, which could warrant judicial review under Article 226.

19. The learned counsel relies on judicial precedents including *Silppi Constructions Contractors v. Union of India*, (2020) 16 SCC 489 and *Tata Cellular v. Union of India*, (1994) 6 SCC 651, to submit that courts must exercise great restraint in interfering with public tenders, unless there is a demonstrable violation of law, arbitrariness, or bias—none of which have been established in the present case.

20. It is also submitted that even if the land were Kacharai, the Hon'ble Supreme Court in *Jagpal Singh vs. State of Punjab* 2011 HCC 396 recognized that exceptions exist for essential public utilities, and that in cases of overriding public interest—such as veterinary healthcare and animal husbandry services land may be utilized, subject to policy decisions and administrative oversight.

ISSUES TAKEN UP FOR DETERMINATION

21. Heard learned counsel for both the parties at length and carefully perused the material on record. The following issues arise for determination:

Issue No. I: Whether the issuance of the impugned tender without prior consultation with the

Panchayat violates the J&K Panchayati Raj Act, 1989, or any constitutional or statutory mandate?

Issue No. II: Whether the land in question is Kacharai land, and if so, whether construction can lawfully proceed without prior acquisition or consent of the Panchayat?

Issue No. III: Whether any arbitrariness, mala fide, or procedural illegality has been established in the tendering process so as to warrant judicial interference under Article 226 of the Constitution?

LEGAL ANALYSIS

22. The issues framed above are now taken up for determination by this Court.

Each issue is examined individually in the following paragraphs, upon a careful consideration of the pleadings, the evidence placed on record, and the applicable legal principles as expounded in judicial precedents.

Issue No. I: Whether the issuance of the impugned tender without prior consultation with the Panchayat violates the J&K Panchayati Raj Act, 1989, or any constitutional or statutory mandate?

23. The petitioner contends that the impugned tender, issued for the construction of Veterinary and Sheep Extension Centres, was finalized without any prior consultation or approval from the Halqa Panchayat concerned, thereby violating the spirit and intent of the Jammu and Kashmir Panchayati Raj Act, 1989.

24. It is true that Sections 12 and 13 of the 1989 Act define the *functions and* responsibilities of Halqa Panchayats and envisage a participatory framework wherein Panchayats play an active role in identifying and implementing developmental priorities. However, upon a careful reading of the statutory scheme, it becomes evident that the Act does not impose a mandatory obligation upon the State or its executing agencies to seek prior consultation with the Panchayat in all development works-particularly those undertaken on Sarkar (government-owned) land, and funded by State or centrally-sponsored schemes, where administrative control remains with the executive.

25. The principle that unless consultation is made a statutory condition precedent to the exercise of a power, non-consultation cannot vitiate the exercise of that power squarely applies to the present case. The petitioner has not pointed to any provision in the 1989 Act that expressly mandates consultation with the Panchayat prior to issuing tenders for such public

works. The mere inclusion of general duties or roles within Sections 12 and 13 cannot be interpreted to mean that executive decisions are subject to Panchayat veto or pre-clearance, unless the statute says so in express terms.

26. A similar view was taken by the Hon'ble Supreme Court in *Municipal Council, Ratlam v. Vardichan (1980) 4 SCC 162*, where it was emphasized that while local bodies play a crucial role in decentralized governance, executive discretion in essential public functions must be preserved, unless clearly fettered by law.

27. While local participation is important for developing support for policies and ensuring services meet community needs but it needs to be formalised through statutory procedure to be effective and sustainable. Democratic engagement through local institutions is vital, but unless codified as part of statutory procedure, lack of such engagement cannot *ipso facto* vitiate executive action.

28. In the present case, the record reveals that the tendering authority is executing a centrally funded infrastructure project involving the establishment of veterinary and sheep welfare facilities. The land identified for the project is not vested Panchayat property under Section 4 of the 1989 Act, nor is the project funded through Panchayat allocations. Accordingly, the administrative domain over both land and finances lies with the executive wing of the government. This can be substantiated by placing the reliance upon the judgment of this Court passed in WP(C) No. 3580/2019 titled "*Prithpal Singh and others vs. State of J&K and others*" and the relevant paragraphs of the judgement are reproduced as under:

"36. The fact cannot be denied that for execution of any project wherever the tenders have been called, these are normally in two parts- namely the technical bid and the financial bid. The capacity of a person 2020:JKLHC-JMU:6762 who bids for the project is examined first before opening the financial bid. All this expertise are not available with the Halqa Panchayat. There are norms laid down even for the projects to be executed by any of the agencies of the Government which are to be followed for the purpose. This highly technical work cannot be left at the hands of Halqa Panchayats, which are presently lacking technical qualifications and the expertise for the purpose."

29. It is further observed that while decentralized governance is a constitutional value, it must be balanced against the legitimate administrative interests of the state, particularly in the execution of time-sensitive public welfare projects. The principle of cooperative federalism and decentralization must not be interpreted to imply that every executive decision must be routed through a consultative process with the local body. Such a reading would disrupt governance.

30. In view of what has been discussed hereinabove coupled with the law laid down by the Apex Court, it is evident that the absence of formal consultation with the Panchayat does not amount to a breach of the Panchayati Raj Act, nor does it violate any enforceable constitutional right. At best, it may constitute a missed opportunity for coordination but it does not, in and of itself, vitiate the legality of the tendering process or the underlying administrative action.

Issue No. I is decided, accordingly.

Issue No. II: Whether the land in question is Kacharai land, and if so, whether construction can lawfully proceed without prior acquisition or consent of the Panchayat?

31. The factual assertion raised by the petitioner, that the land identified for the construction of Veterinary and Sheep Extension Centres in Kacharai land, traditionally reserved as village common grazing land. Based on this assertion, the petitioner submits that any construction activity on the said land without formal acquisition or Panchayat approval is per se illegal.

32. However, this contention does not withstand scrutiny when tested against the documentary record and binding judicial precedents. The revenue records placed on record by the respondents unequivocally classify the land in question as Sarkar (State) land, under the ownership and administrative control of the Revenue Department. The petitioner has failed to produce any countervailing revenue extracts, mutation entries, or official land classification documents indicating that the land is recorded as Kacharai. Mere assertions in the pleadings or references in the Panchayat resolution which itself does not attach any supporting extracts are insufficient to rebut the presumption of correctness attached to official records.

33. The Hon'ble Supreme Court in *State of Bihar v. Radha Krishna Singh*, (1983) 3 SCC 118, reaffirmed the settled principle that:
- “Entries in revenue records are presumed to be correct unless rebutted by cogent evidence. Mere oral assertions or assumptions cannot displace official records.”***
34. This position was reiterated in *Union of India v. Vasavi Co-op. Housing Society*, (2014) 2 SCC 269, where it was held that:
- “Revenue records are not mere clerical notings. They carry evidentiary value unless specifically disputed and disproved through legally admissible material.”***
35. Considering the facts of the present case, there is no credible rebuttal to the government's classification of the land as Sarkar land. Thus, the petitioner's claim that the land is Kacharai has not been proved and is legally unsustainable.
36. Even assuming for the sake of arguments, that the land was historically classified as Kachari, or was being used as such informally, the law does not impose an absolute bar on its utilization for legitimate public purposes. In the landmark case of **Jagpal Singh v. State of Punjab**, (2011) 11 SCC 396, the Hon'ble Supreme Court emphasized the need to protect village commons from illegal unauthorised occupations but carved out important exceptions. The Court held:
- “... in exceptional cases where village common lands are used for the construction of schools, dispensaries, hospitals, community centres or other public purposes which benefit the villagers, the same may be permitted subject to following due process.”***
37. The project in question i.e., construction of Veterinary and Sheep Extension Centres, serves a core rural welfare function in an agrarian region. It is directly aligned with public health, animal husbandry, and economic upliftment, particularly in areas where livestock is a primary source of livelihood. The project does not involve any diversion for commercial use, nor does it involve alienation of land for private gain. On the contrary, it is aimed at enhancing rural infrastructure and livestock support systems, a purpose that falls squarely within the exceptions recognized by the Hon'ble Supreme Court.

38. Lastly, it is also an admitted position of law that no acquisition proceedings are required when the land in question is government-owned and under lawful administrative control. Similarly, no Panchayat consent is mandated by statute in such cases unless the land is vested in the Panchayat under specific legislative provisions, a factual scenario in this regard is absent here.

Issue No. II is decided, accordingly.

Issue No. III: Whether any arbitrariness, mala fide, or procedural illegality has been established in the tendering process so as to warrant judicial interference under Article 226 of the Constitution?

39. It is pertinent to mention that the petitioner has not made any averment or placed on record any material that would prima facie suggest mala fide intent, procedural impropriety, favoritism, or irregularity in the issuance, evaluation, or award of the tender. The principal grievance advanced by the petitioner pertains to the alleged non-consultation with the Panchayat and the disputed classification of the land issues which have already been addressed and adjudicated in the preceding portions of this judgment.

40. The legal position governing judicial review in matters concerning public contracts and tenders is well established. In **Tata Cellular v. Union of India, (1994) 6 SCC 651**, the Hon'ble Supreme Court authoritatively held:

“The principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, the Court does not sit as an appellate authority over tender decisions. The scope of interference is limited to the decision-making process, and not the merits of the decision itself.”

41. This principle has also been reiterated by this Court in a judgement passed in WP(C) No. 1540/2024 titled “M/S K.P. Singh Lau versus Union of India and Ors.” decided on 27.12.2024. The relevant extract of the said judgment is reproduced here as under:

“The scope of interference by the Constitutional Courts in tender matters is minimal and confined to the extent when there is arbitrariness, irrationality, and unreasonableness, mala fide or bias. However, in the present case, the case of the petitioners do not fall within these exceptions carved out in light of the law laid down in Tata Cellular's case (Supra) and (ii) followed by the Apex Court in subsequent judgments. The Hon'ble Apex Court has even gone to the extent of observing that even if the case of a party falls

within these parameters, the Court shall refrain from interfering in case, such interference would impede public interest. In the aforesaid backdrop, this Court is not inclined to interfere in the instant case in absence of any strong foundation on these exceptions carved out by the Hon'ble Apex Court"

42. In the instant case, the tender was publicly notified, and the record does not disclose any deviation from the applicable procurement norms or procedures. There is no allegation that the eligibility conditions were tailor made to benefit any particular entity, nor has any impropriety been attributed to the process of bid evaluation or contract award.

43. Thus, in view of the above observations, the tender notice issued does not suffer from any malafide intent, procedure impropriety or irregularity.

Issue No. III is decided, accordingly.

CONCLUSION

44. Upon due consideration of the factual matrix, the documentary record, and the rival submissions of the parties, the Court is of the view that the writ petition is liable to be dismissed on the ground of substantive legal infirmities.

45. The petitioner has not established the existence of any legal right that has been infringed. The petitioner does not claim ownership, occupancy, or legal entitlement over the land in question, nor is the petitioner an aggrieved participant in the tendering process. In the absence of a demonstrable legal injury, the invocation of this Court's writ jurisdiction under Article 226 of the Constitution of India cannot be sustained. The law is settled that a writ petitioner must show a legally enforceable right that has been violated or is under threat of violation.

46. On the question of alleged procedural illegality in the form of non-consultation with the Panchayat, this Court finds no statutory foundation for the petitioner's grievance. Sections 12 and 13 of the J&K Panchayati Raj Act, 1989, which have been relied upon by the petitioner, enumerate the functions and duties of the Panchayat, but do not impose a mandatory requirement for consultation with the Panchayat before the commencement of development works on government land by the State authorities. In absence of any statutory obligation, the failure to consult, does not vitiate the administrative action.

47. With regard to the classification of the land, the respondents have placed on record certified revenue extracts showing the land to be classified as Sarkar (i.e, government) land. These entries enjoy a presumption of correctness under law and have not been rebutted by the petitioner through any credible documentary evidence. Even assuming for the sake of arguments that the land was previously used as Kacharai (grazing land), the proposed use for veterinary and sheep welfare facilities falls squarely within the category of public utility infrastructure.
48. As regards the challenge to the tender process itself, the petitioner has not alleged any instance of mala fide, bias, procedural irregularity, or statutory violation. The tender appears to have been issued through a competitive and transparent process, in furtherance of a public welfare objective. It is well settled law, that the scope of judicial review in contractual matters is limited to examining the legality and rationality of the decision making process, and does not extend to substituting the Court's opinion.
49. In the present case, no material has been brought on record to show that the tender process was vitiated by any illegality, discrimination, or arbitrariness. The project in question is intended to serve the rural people by enhancing veterinary care and livestock management, and falls within the executive's discretion to allocate resources and execute public works.
50. In view of the foregoing analysis, this Court finds that the writ petition is devoid of any merit and the petitioner has failed to establish any infringement of a legally enforceable right, and has not demonstrated any legal infirmity in the tender process that would warrant intervention under Article 226 of the Constitution.
51. Accordingly, the writ petition is **dismissed**.

(Wasim Sadiq Nargal)
Judge

Srinagar:
Mubashir
30.07.2025

- i. *Whether the Judgment is Reportable: Yes/No*
- ii. *Whether the Judgment is Speaking: Yes/No*