HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

OWP No. 322/2018

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Abdul Rashid Khan S/O Assadullah Khan
R/O Kongamdara, Pattan, age 60 approx. District Baramulla.

…Petitioner(s)

Through: Mr. Shahnaz Ratanpuri, Advocate

Vs.

1. State of JK through Financial Commissioner (Revenue) J&K Jammu/Srinagar.

2. Divisional Commissioner, Kashmir, Srinagar.

3. Deputy Commissioner, Baramulla.

4. Tehsildar, Pattan, District Baramulla.

5. Bashir Ahmad Ganie S/O. Late Khazir Mohammad Ganie R/O. Kongamdara, pattan District Baramulla.

...Respondent(s)

Through: Mr. Ilyas Nazir Laway, GA, for 1 to 4
Mr. J.H.Reshi, Advocate, for 5

CORAM:

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

JUDGMENT

01. The petitioner through the medium of instant petition has called in question Orders dated 3rd March, 2016, 23rd May, 2016 and 27th February, 2018, passed by the respondents 1, 2 and 4 respectively and has further sought a writ of Mandamus, commanding the respondents not to disturb the present position on the spot also not to harass the petitioner

and to allow him the use and enjoyment of his property without any hindrance.

02. The petitioner claims to be owner in possession of land measuring 02 Kanals falling under Survey No. 1607 situated at village Nawlari, which he had purchased few years back. After the purchase the petitioner claims to have constructed his house over the said land.

03. The case of the petitioner is that respondent no. 5 has his land in Khasra No. 1606 which falls on the rear (North) side of the petitioner's house having two approach roads and the said roads are being used by the respondent no. 5 without any hindrance. With a view to fortify his claim, the petitioner has placed on record copies of the revenue extracts evidencing the aforesaid fact. The further case of the petitioner is that respondent no. 5 claims that he was using his land prior to its purchase by the petitioner for ingress and egress to his land.

04. Feeling aggrieved by the purchase and subsequent raising of the wall and construction of house by the petitioner, the respondent no. 5 instituted a false and frivolous case before the respondent no. 4 i.e., Tehsildar, Pattan, stating therein that the petitioner had encroached upon an alleged common pathway and the respondent no. 4 was apprised that a civil suit was already filed before the learned Sub Judge, Pattan as a result of which, the respondent no. 4 ordered that the proceedings before him shall await the outcome of the civil suit before the learned court of Sub Judge, Pattan. In the said civil suit, the petitioner though appeared and filed his written statement and the matter was considered by the learned Trial Court by virtue of order dated 24th March, 2016. Accordingly, the interim order of status quo granted in favour of the respondent no. 5 was vacated.

05. Feeling aggrieved of the aforesaid order of learned Trial Court, the respondent no. 5 preferred an appeal before the Court of learned Principal District Judge, Baramulla, which was dismissed as withdrawn on the basis of statement made by respondent no. 5 that an order had already been passed on his application by the respondent no. 2. Although, the respondent no. 4, as pleaded in the writ petition, had earlier kept the proceedings before him pending till outcome of the civil suit, yet surprisingly the respondent no. 4 had in the meantime passed an order dated 3rd March, 2016, impugned herein, whereby the respondent no. 4 stated that he has recorded satisfaction and came to the conclusion that the petitioner has encroached upon the alleged pathway. It is pleaded in the writ petition that the respondent no. 4 has in fact invoked Section 3 of the Common Lands Act and directed petitioner to remove the obstruction in the alleged pathway within a period of five days.

06. The petitioner, feeling aggrieved by the aforesaid action of respondent no. 4, approached this Court by filing a writ petition being OWP No. 303/2016 before this Court. The said writ petition came up for consideration before this Court on 8th March, 2016 and was accordingly disposed of with the liberty to the petitioner to file an appeal against the aforesaid order passed by the respondent no. 4 with further direction that the status quo shall remain in force for a period of two weeks from the date of passing of the order dated 8th March, 2016. It is pleaded in the writ petition that petitioner in pursuance of the directions passed by this Court approached the respondent no. 2 by way of filing of revision petition, which came up for consideration on 23rd March, 2016. Accordingly, notice

was issued to the respondents therein and the matter was directed to be listed on 29th June, 2016 at 2:00 P.M.

07. Mr. Shahnaz Ratanpuri, learned counsel appearing for the petitioner, with a view to fortify his claim, has drawn the attention of this Court to the aforesaid order, a perusal whereof vindicates the stand of the petitioner. Learned counsel for the petitioners submits that although the matter was fixed for 29th June, 2016, but surprisingly without there being any application for preponement of the case, the matter was taken up on 23rd May, 2016 in blatant violation of the procedural laws and the matter was decided in absence of the petitioner on merits. The respondent no. 2, while passing the aforesaid order, has drawn the conclusion against the petitioner in flagrant violation of the principles of natural justice and the aforesaid order passed by the respondent no. 2 is impugned in the instant petition. Learned counsel further submits that against the order of respondent no. 2, the petitioner preferred a revision petition and the said revision petition also came to be dismissed by the virtue of order dated 27th February, 2018. The said order is also subject matter of the instant petition.

08. The petitioner, through the medium of instant petition, has challenged all the three orders, which, according to learned counsel for the petitioner, have been passed in violation of the principles of natural justice as the revision petition was decided by the respondent no. 2 without affording an opportunity of hearing to the petitioner and without there being any motion for preponement. Thus, the action from the end of respondent no. 2 smacks of arbitrariness and amounts to a colourful exercise of powers vested in him.

09. It has been vehemently argued by learned counsel for the petitioner that at least the case could in no way have been

preponed without notice to the petitioner, which was mandatory requirement under the law, as such, on this count alone, the impugned orders being bad in law deserve to be set-aside. In addition, learned counsel further submits that respondent no. 5 has agitated his claim before two forums simultaneously as he has approached the respondent no. 2 and simultaneously filed a civil suit before the court of learned Sub Judge, Pattan, which act of respondent no. 5 is barred by the principle of *Res Judicata*. The respondent no. 5 failed to get an order from the court of learned Sub Judge, Pattan, he, therefore, proceeded with the said proceedings before respondent no. 4 with a view to get an interim order.

10. Learned counsel for the petitioner further argued that respondent no. 4 had earlier kept the proceedings pending before him on hold in view of the pendency of the civil suit. By virtue of the order impugned passed by the respondent no. 4, the petitioner was directed to remove the alleged encroachment. However, there was no reference with regard to the earlier order passed by the court of learned Sub Judge, Pattan in the aforesaid order. Therefore, on this count also the orders impugned cannot sustain test of law and deserve to be set-aside.

11. Lastly, learned counsel for the petitioner has argued that the proceedings have been conducted under the provisions of Common Lands Act and that reference has also been made to a judgment of this Court in case titled **"*Sabir Dar vs. Deputy Commissioner, Anantnag*"** reported in **2010 (8) JKJ 400**. In the present case, the proceedings, according to learned counsel for the petitioner, have been conducted on the premise that the dispute is covered under the Common Lands Act when as a matter of fact, the dispute is entirely civil in nature and for that the

respondent no. 5 has already availed remedy available to him under law.

12. The Judgment, which has been referred to hereinabove by respondents 1, 2 and 4 while passing the impugned orders, pertains to land that are used by villagers for common access and the case referred supra is not a case of respondent no. 5 that the said alleged pathway is used by the villagers but the specific case of respondent no. 5 which has been projected was that the alleged pathway leads to his land, thus, by no stretch of imagination can the alleged pathway be called as a common pathway because respondent no. 5 is claiming right of user over the said alleged pathway and except for the respondent no. 5, no other person of the village has made any claim over the land of the petitioner, therefore, invoking the provisions of the Common Lands Act and placing reliance on the aforesaid judgment was not legally sustainable as per the learned counsel for the petitioner.

13. It is pleaded by the learned counsel for the petitioner that the petitioner has already fenced his land and constructed house over the aforesaid land which was not objected by the respondent no. 5 at that point of time and all of a sudden, it appears that the respondent no.5 has awaken from a deep slumber and has initiated the aforesaid proceedings with a view to dispossess the petitioner from his proprietary land in violation of all established rules, regulations and norms. It is further pleaded in the writ petition that no doubt a pathway under the Common Lands Act may exist on proprietary land also, but only for the benefit of people in general and not for the benefit of an individual who already has two motorable access roads to his property. The invocation of provisions of the Common Lands Act for the benefit of respondent no. 5 is, therefore,

arbitrary, illegal and colourable exercise of power and in that view of the matter the proceedings conducted by the respondents 1,2, and 4 being bad in law, deserve to be set-aside.

14. *Per contra*, objections have been filed on behalf of respondent no. 5, who is represented by Mr. J.H.Reshi, Advocate. However, at this stage, Mr. Illyas Nazir Laway, learned GA, appearing for respondents 1 to 4 made a categorical statement at the Bar that since it is an inter-se dispute between the petitioner and respondent no.5, he does not want to file any reply. The statement of learned counsel is taken on record.

15. The respondent no. 5, has filed a detailed objection in which a preliminary objection has been raised with regard to the maintainability of the instant writ petition on the ground that the orders are passed by the statutory authorities prescribed under the provisions of Jammu &Kashmir Common Lands (Regulation) Act, 1956 read with Section 133 of the Jammu and Kashmir Land Revenue Act. In addition, another preliminary objection has been raised by learned counsel appearing on behalf of the respondent no. 5 that since the petitioner has chosen to challenge the basic order dated 3rd March, 2016, passed by the Tehsildar concerned under the provisions of Section 3 read with provisions of Section 133 of Jammu and Kashmir Land Revenue Act prescribed under the Act and, therefore, after having exercised alternate efficacious remedy available to him under law, he is not entitled to file the instant writ petition as against the concurrent findings of fact and the orders passed therein in accordance with the law.

16. The respondent no. 5, however, has taken a specific stand in the objections that he along with other villagers have

been using the pathway in question for their ingress and egress from times immemorial as has been found by the concerned Tehsildar after thorough enquiry conducted on spot in presence of the parties so the same is not amenable to challenge before this Court through the medium of instant writ petition. The further stand taken by the respondent no. 5 is that Khasra No. 1607 is the land measuring 8 Kanals out of which petitioner has recently purchased 2 Kanals only and under this garb he is trying to block/obstruct the right of ingress and egress of other landowners/villagers using the same since times immemorial with a mala fide intention and in that view of the matter the writ petition being misconceived is liable to be dismissed. It is further submitted in the objections that the matter was brought to the notice of the respondent no. 4 by respondent no. 5, who, after visiting the spot and holding enquiry, has held that a common pathway existed on spot and petitioner was causing undue hindrance/obstruction in the ingress and egress of the other villagers/land owners, as such, he has been asked to remove the same as required under law. The petitioner, as per respondent no. 5, was fully associated with the said enquiry after a proper service of summons and hearing by the Tehsildar concerned when the aforesaid orders were passed.

17. The respondent no. 5, in his objections, has also taken a stand that the appeal filed as against the order dated 24th March, 2016 passed by the learned Sub Judge, Pattan was withdrawn in terms of order dated 11th June, 2016, as the Tehsildar concerned has passed the aforesaid order under the provisions of Section 3 of the Jammu and Kashmir Common Lands (Regulations) Act, 1956 read with provisions of Section 133 of the J&K Land Revenue Act

directing the petitioner therein to remove the obstruction from the said pathway on the spot.

18. In addition, it is a specific stand of the respondent no. 5 that the respondent no. 4 has passed the aforesaid order strictly in accordance with law and, accordingly, this Court, vide Order dated 8th March, 2016 passed in OWP No. 303/2016 advised the petitioner to file the statutory appeal against the said order of Tehsildar concerned (respondent no. 4). The aforesaid order was challenged by the petitioner before the Divisional Commissioner, Kashmir (respondent no. 2), who upheld the same and against that order of respondent no. 2, the petitioner again filed a revision petition before the learned Financial Commissioner Revenue (J&K), who also dismissed the same and upheld the order passed by the respondents 2 and 4. Thus, according to Mr. Reshi, the orders passed by all the three forums are in accordance with law and the challenge thrown to the same is ill-founded and the writ petition being devoid of any merit is liable to be dismissed.

LEGAL ANALYSIS

19. Having heard learned counsel for the parties and perused the material on record, this Court is required to examine whether the impugned action of the respondents is in accordance with law. The issue that arises for determination is whether the orders have been passed after following the prescribed procedure and whether the rights of the petitioner have been affected in violation of settled legal principles. This Court is, therefore, required to assess the action of the respondents on the touchstone of fairness, reasonableness and compliance with statutory requirements.

20. On a careful consideration of the material placed on record, this Court finds that the claim of respondent no. 5

regarding the existence of a pathway through the petitioner's land is not supported by any revenue record. The revenue record, which constitute the primary and authoritative source for determining the nature and character of land, do not reflect any such pathway. This factual position stands fortified by the order of the Learned Sub-Judge, Pattan dated 24.03.2016, wherein, after considering the pleadings and the report of the concerned Patwari, the court clearly held that no pathway existed through the land of the non-applicants. The court also noted that just using someone's private land as a passage does not automatically create an easement of necessity. The trial court further found that the applicants had not shown any prima facie right, and that the balance of convenience favored the landowner, whose land was properly fenced. For the facility of reference the order of learned trial court is reproduced as under:

> *"After going through the contentions of the parties, it is prima-facie clear that the land of the applicants is adjacent to the to the land of the defendants and the applicants are claiming pathway through the land of the defendant No. 1 on the sole ground of right of easement, the land of the defendant No. 1 as per the report of the Patwari is fenced with Tin walling.* ***Even if it is presumed that the applicants were using the passage through land of the non applicants, mere passage through proprietary land does not create easement of necessity, the documentary evidence also suggest that there was no pathway existing through the land of the non-applicants.*** *The plaintiffs have not been in a position to establish any prima-facie case in their favour at this stage. The balance of convenience appears to tilt in favour of defendant No.1 who has his land fenced No irreparable loss will be caused to the applicants*

> *if the relief prayed for is not granted to them at this stage. Therefore the applicants' application merits dismissal and is dismissed accordingly. Order dated 04.12.2015 shall stand vacated. Application after due completion shall form part of the main file."*

21. The conclusion drawn by the Learned Sub-Judge stands further reinforced by the order of the Financial Commissioner (Revenue) dated 27.02.2018, which also records that "***no pathway is entered in the revenue records"***. For the facility of reference same is reproduced as under:

> *"5) After going through the records and reports of the field functionaries it is primafacie clear that the land of Respondents is adjacent to the land of petitioner and the Respondents are claiming pathway through the land of the petitioner covered under survey no.1607 of village Navlari Pattan.* ***Although no pathway is entered in the revenue records, which the Respondents are claiming but it has been established that the erstwhile owner of land under survey no. 1607 (Mufti Mehraj-ud-din) had voluntarily allowed the Respondents and the other zamindaras of the village, to use the pathway for times immemorial.*** *The petitioner herein who has reportedly recently purchased the land cannot now close the pathway for the reasons that the same is being used for quite a long time now with the consent of erst-while owner."*

22. In view of the consistent findings of the revenue authorities and the civil court, and the absence of any revenue entries, this Court is satisfied that respondent no. 5 has failed to establish the existence of any lawful pathway through the petitioner's land.

23. This Court finds that the Divisional Commissioner has affirmed the order dated 03.03.2016 passed by the Tehsildar Pattan without taking into account the important factual and legal aspects which were essential for deciding the matter. The record shows that, on the date of passing of the order by Tehsildar, a civil suit concerning the same very subject matter was pending before the Court of the learned Sub Judge, Pattan. Accordingly, the Tehsildar had earlier, vide order dated 12.12.2015, kept the proceedings in abeyance acknowledging the pendency of the civil action. The Divisional Commissioner, while upholding the order dated 03.03.2016, has failed to notice that the Tehsildar revived the proceedings without assigning any reason and in complete disregard to the fact that the issue was res-*subjudice*, which mandates that parallel adjudication on the same issue cannot proceed. The omission to address these fundamental legal infirmities renders the impugned order unsustainable.

24. For the facility of reference order of Divisional Commissioner is reproduced as under:

> *"I have heard the respondent No. 1 and counsel for the response No. 3 at length and gone through the records available on file, as well as order dated 03-03-2016 passed by Tehsildar Pattan (respondent No. 2 reveals that the Tehsildar Pattan has passed the order dated: 03-03 2016 where under section 3 of Common Lands Act, read with judgment of Hon'ble-High Court in case Sabir Dar Vis Dy. Commissioner. Collector Anantnag and others 2010 (8) JKJ HC-400 1979 KLJ 223 (FB) AIR 1978 JKLR (FB) directing Therein to the petitioner to remove the obstruction made on pathway within 5 days from the date of order passed by Tehsildar Pattan. Tehsildar Pattan has passed the order dated: 03-03-2016 rightly*

> *and there is no ambiguity in the said order which could warrant any interference by this court. Under the circumstances explained herein above. The revision petition is dismissed of and the order dated: 03-03-2016 passed by Tehsildar_ Pattan is upheld. Tehsildar concerned is directed to implement the order dated: 03-03-2016 in letter and spirit and get the pathway restored forthwith. Interim Order, if any, shall stand vacated. The file shall be consigned to record after due completion."*

25. This Court has also considered the petitioner's grievance regarding the manner in which the revision petition before respondent no. 2 came to be decided. The petitioner has specifically averred that the revision was duly notified and listed for hearing on 29.06.2016; however, the matter was, without any prior intimation, taken up and disposed of prior to the said date i.e on 23.05.2016. It is asserted that no application seeking preponement was ever filed, nor was any notice issued to the petitioner informing him that the matter would be heard on an earlier date. Therefore, this court has no hesitation in holding that the order was passed behind the petitioner's back, resulting in a clear denial of opportunity of hearing.

26. Upon perusal of the record, this Court finds no material to indicate that any such application for preponement was ever moved or that any exceptional circumstances existed warranting preponement of the hearing. The respondents have not placed on record any contemporaneous noting, communication, or justification explaining why the matter, initially fixed for 29.06.2016, was taken up on 23.05.2016.

27. It is well settled that adherence to the rule of ***audi alteram partem*** is an indispensable requirement of any quasi-judicial proceeding. In the present case, the preponement of the hearing date without any notice to the petitioner

constitutes a clear infraction of the principles of natural justice. The Hon'ble Supreme Court has repeatedly deprecated the practice of preponing matters without informing the affected party, holding that such orders are unsustainable in law.

28. The Hon'ble Supreme Court in case titled **Ranjit Singh &Anr versus State of Uttarakhand & Ors.** reported as **2024 LiveLaw (SC) 737** observed as under:

> *"As the suit was fixed on 30th May, 2002, the defendants were entitled to a notice that the suit would be taken up on an earlier date for hearing the application for striking out the defence. When the defendants had appeared in the suit, the act of preponing the date without notice to them or their advocate was completely illegal and contrary to elementary principles of natural justice. Therefore, it follows that the order striking out the defendants' defence is completely illegal, and the said order deserves to be set aside."*

29. In the present case, the preponement of the hearing date from **29.06.2016** to **23.05.2016**, without notice to the petitioner and without assigning any reason, constitutes a serious procedural irregularity which can't be condoned by this court. The order dated **23.05.2016**, having been passed in the absence of the petitioner and without ensuring compliance with the foundational principles of fair procedure shall stand vitiated. Such order cannot be sustained in the eyes of law, as the denial of an opportunity of being heard goes to the very root of the decision-making process and vitiates the proceedings arising out of the same.

30. This Court has given its thoughtful consideration to the submissions and perused the material on record.

31. It is the specific contention of the petitioner that the Respondent No. 5 has pursued parallel remedies before the civil court as well as before the revenue authorities. The material placed on record demonstrates that Respondent No. 5 had instituted a civil suit before the Court of learned Sub Judge, Pattan, wherein the dispute pertaining to the same property and the same cause of action was directly in issue. Notwithstanding the pendency of said civil proceedings, Respondent No. 5 chose to simultaneously invoke the jurisdiction of the Tehsildar (Respondent No. 4).

32. The record further reveals that Respondent No. 4, in his order dated 12.12.2015, infact duly acknowledged this legal position and categorically directed that the proceedings before him shall remain in abeyance in view of the pendency of the civil suit. However, while passing the subsequent impugned order dated 03.03.2016, the concerned Tehsildar has made no reference whatsoever either to the pendency of the civil suit or to his own earlier order keeping the matter in abeyance. The impugned order passed by concerned Tehsildar is entirely silent as to why the proceedings were revived or what compelling circumstance necessitated changing of earlier order to keep the matter in abeyance. Such non consideration of a material and relevant fact strikes at the very root of the decision making process and constitutes a serious procedural irregularity which cannot be condoned.

33. This Court is mindful that the principle of *res sub judice*, as embodied in **Section 10 of the Code of Civil Procedure, 1908**, squarely applies to the present factual scenario. The record establishes that Respondent No. 5 had already instituted a civil suit before the learned Sub Judge, Pattan, concerning the same very subject. During the

pendency of that civil suit, Respondent No. 5 simultaneously invoked the jurisdiction of the Tehsildar on the identical issue.

34. The doctrine of *res sub judice* is intended to prevent **parallel adjudication of the same dispute by two different forums**, so as to avoid conflicting decisions and to maintain judicial discipline

35. The Hon'ble Supreme Court in case titled as **National Institute of Mental Health & Neuro Sciences *v.* C. Parameshwara reported as *[(2005) 2 SCC 256]*** in which it has been held as follows :

> *"8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are 'the matter in issue is directly and substantially in issue' in the previous instituted suit. The words 'directly and substantially in issue' are used in contradistinction to the words 'incidentally*

> *or collaterally in issue'. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical."*

36. This Court in case titled as **Abdul Majid Kirmani & Anr. vs Bilal Ahmad Kirmani reported as 2025 LiveLaw (JKL**) has observed as under:

> *"If the matter in issue in the subsequent suit is directly and substantially in issue in the previously instituted suit, Section 10 of the CPC has to be invoked, because the same is mandatory in nature. As already discussed, the matter in issue in the suit filed by the respondent is directly and substantially in issue in the suit filed by the petitioner. Therefore, trial of the suit filed by the respondent which is a subsequent suit is liable to be stayed."*

37. The revenue court was well aware of the proceedings pending before the civil court on the same subject matter. In such a situation, it was obligatory upon the revenue court to await the culmination of the civil proceedings. Once the civil court had taken cognizance of the dispute, the revenue court became functus officio and could not simultaneously proceed to deal with the same subject matter.

38. The Tehsildar, despite being fully aware of the pendency of the civil suit, proceeded to decide the matter unilaterally. Such conduct is squarely barred by the doctrine of *res sub judice*, also by the settled principle that subordinate authorities cannot pass orders which may prejudice or interfere with the adjudication pending before the civil court.

39. This Court thus concludes that Respondent No. 4 acted in complete disregard of the binding principles of law and in

violation of his own earlier order dated 12.12.2015, and the impugned order dated 03.03.2016 is therefore not tenable in the eyes of law.

40. In Similar facts and circumstances, Madhya Pradesh High Court in case titled as ***Shri Dev Hanuman Ji Mandir Sarvajanik Samiti Rehli Versus Kamal Kumar Jain decided on 6th of August, 2024 Misc. petition no. 4511 of 2021*** has observed as under:

> *"Thus, this court, in so many words has already held that the jurisdiction of the civil court is superior to that of the jurisdiction of a revenue court. In such circumstances also when the civil suit is already pending between the parties regarding the title of the property, the mutation proceedings before the revenue authorities can have no sanctity attached to them."*

41. Further, this court in case titled as **Tanzeem Khursheed Zargar versus J&K Special Tribunal & Ors. Reported as 2022 LiveLaw (JKL) 201** has held as under:

> *"19. Thus, from the aforementioned enunciation of law, it is clear that a person may have a right to choose the forum for redressal of his grievance, but he/she cannot be permitted to choose two forums in respect of the same subject-matter for the same relief."*

42. 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. Respondent No. 5 has consciously initiated a civil suit before the learned Sub Judge, Pattan, and during the pendency of the said suit, simultaneously pursued proceedings before the revenue authorities.

43. This Court on perusal of record observes that Respondent No. 5 had also preferred an appeal before the learned District Judge Baramulla, against the order passed by the learned Sub Judge, Pattan. However, once he succeeded in obtaining a favourable order dated 23.05.2016 from the Divisional commissioner (Respondent No. 2), he chose to withdraw the said appeal. The withdrawal of the appeal, immediately after securing a favourable order from the revenue authority, appears to be a calculated attempt to circumvent the civil court's jurisdiction and to sustain the benefit obtained through the parallel revenue proceedings. Such conduct, coupled with the Tehsildar's unexplained change from his earlier order to keep the matter in abeyance during the pendency of the civil suit, reflects a clear procedural lapse.

44. Further, the perusal of records reveal that Tehsildar, Pattan, vide order dated 03.03.2016, directed the petitioner to remove the alleged obstruction from the pathway within five days. While doing so, the Tehsildar placed reliance on the judgment rendered in ***Sabir Dar v. Deputy Commissioner/Collector, Anantnag & Others, reported as 2010 (8) JKJ HC-400; 1979 KLJ 233 (FB); AIR 1979 J&K 41 (FB); 1978 JKLR 495 (FB)***. However, despite quoting a portion of the said judgment, the Tehsildar failed to assign any reasoning or demonstrate how the legal principles enunciated therein were applicable to the facts

of the present case. The relevant portion of the judgment relied upon reads as follows:

> *"Scope of Section 3 — the expression 'common lands' has not been defined in the Act. Ordinary connotation of the expression refers to a place such as a road, street, pathway, channel, drain, etc., in a village over which the inhabitants of the village exercise common rights of user. Such a place, if used for common or public purposes, comes within the purview of Section 3 of the Act. According to the proviso to Section 3, the right of user over pathways and such places must have been exercised by the inhabitants of the village continuously for at least one year at any time prior to the commencement of the J&K Common Lands (Regulation) Act, 1956. It is true that a dispute between two individuals over the user of a place in a village cannot attract Section 4 of the Act, such private dispute may give rise to an action for easement. However, where the inhabitants of a village have been exercising rights of user over a pathway belonging even to a private individual, who voluntarily permitted such user from time immemorial, then every inhabitant of the village acquires a right of use over such land. In such a situation, the private owner cannot obstruct villagers from using the pathway for common purposes. Under Section 3, such rights are recognized and may be exercised irrespective of any law, agreement, custom, usage, decree, or order to the contrary."*

45. A bare reading of the above extract demonstrates that the reliance placed by the Tehsildar is misconceived. The judgment cited by the Tehsildar does not support the case of Respondent No. 5, in fact strengthens the case of the petitioner. The judgment supra categorically holds that a dispute between two private individuals concerning the use of land does not attract Section 4 of the Act, and such

disputes, if any, fall within the realm of private easementary rights.

46. The record of the present proceedings shows that the dispute pertains exclusively to the petitioner and Respondent No. 5 and does not involve any right of the general inhabitants of the village. No material has been produced by Respondent No. 5, or placed before the revenue authority or this Court, demonstrating that either the petitioner or the erstwhile recorded owner, namely Mufti Mehraj-ud-Din, had ever permitted the general public or the village community to use the said land as a pathway "from time immemorial," as required by the principle laid down in the cited judgment.

47. On the contrary, both the orders of the learned Sub-Judge, Pattan (supra) as well as the order of the Financial Commissioner, Kashmir (supra) categorically establish that, as per revenue records, no pathway has ever existed over the property in question.

CONCLUSION

48. In view of the foregoing discussion, it is evident that the impugned orders dated 03.03.2016, 23.05.2016, 27.02.2018 suffer from grave legal infirmities and procedural irregularity. The Tehsildar, Pattan acted without jurisdiction and failed to appreciate the binding effect of the pending civil proceedings of similar issue. The subsequent revival of revenue proceedings by concerned Tehsildar, without any justification or reference to the pending civil suit, indicates total non-application of mind. Moreover, the reliance placed by concerned Tehsildar on the judgment referred in his order is misplaced as the same was not applicable to the case in hand.

49. The respondents were under a solemn duty to adhere to the procedure prescribed by law and to ensure that their decision was founded on fairness, reasonableness, and due application of mind. However, the material on record indicates that essential procedural safeguards were overlooked, relevant factors were not duly considered, and the petitioner was subjected to adverse consequences without proper justification.

50. Such deviation from established norms renders the impugned orders **dated 03.03.2016, 23.05.2016, and 27.02.2018** not sustainable in the eyes of law. The respondents, being quasi judicial authorities, are expected to act in a manner that inspires confidence, adheres to the procedure established by law and by no stretch of imagination can deal with the issue simultaneously which is substantially in issue before the competent Civil Court. The respondents have acted in blatant violation of the settled principles of law.

51. The material on record clearly establish that the dispute pertains to private rights between two individuals and does not involve any public right or common pathway as contemplated under section 3 of the J&K Common Lands (Regulation) Act, 1956. Therefore, the impugned proceedings stand vitiated and are not sustainable in the eyes of law.

52. Accordingly, for the reasons stated hereinabove, the writ petition preferred by the petitioner is allowed and **the orders dated 03.03.2016, 23.05.2016, and 27.02.2018** passed by **Respondents 1,2 and 4** respectively are hereby quashed. The respondents are further restrained from disturbing the present position on the spot and are directed not to harass the petitioner in any manner. The petitioner

shall be entitled to peaceful use and enjoyment of his property in question without any hindrance.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
28.11.2025
"*Shamim Dar*"

Whether the Judgment is reportable? Yes/No
Whether the Judgment is speaking? Yes/No