

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 1547/2018
CM No. 4465/2020
CM No. 2900/2019
CM No. 5123/2018

Reserved on: 10.02.2026
Pronounced on: 25.02.2026
Uploaded on: 26.02.2026

Whether the operative part or full judgment is pronounced: Full

1. **Satish Sasan, Aged 48 years,
S/o Sh Sukhraj, R/o Mohalla Panditan;
Ward No.11, Poonch, Tehsil & District Poonch.**
2. **Sanjay Raina, Aged 53 years,
S/o Sh. Hari Krishna Raina,
R/o Mohalla Panditan, Ward No.11, Poonch
Tehsil & District Poonch.**
3. **Hardev Lal, Aged 62 years,
S/o Late Sh. Kaka Ram, R/o Mohalla T. T.
School, Ward No.13, Poonch,
Tehsil & District Poonch.**

.... Petitioner(s)

Through:- None.

Vs.

1. **State of J&K,
Through Commissioner/Secretary
Department of Revenue,
(In-charge Haj & Auqaf),
Civil Secretariat, Jammu**
2. **Deputy Commissioner, Poonch**
3. **Administrator,
Auqaf Islamia, Poonch Haveli,
Tehsil, Poonch**
4. **Sr. Superintendent of Police,
Poonch**
5. **Divisional Commissioner,
Jammu**

.....Respondent(s)

Through:- Mrs. Monika Kohli, Sr. AAG.
Mr. Ayjaz Lone, Advocate.

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE
JUDGMENT

1. At the outset, this Court deems it appropriate to examine the preliminary objection raised by the respondents regarding the

maintainability of the present petition. Since the issue of maintainability lies at the very foundation of the matter, the Court considers it proper to adjudicate the same before entering into the merits of the controversy.

2. It is further relevant to note that despite repeated opportunities, the petitioners have chosen not to appear and have remained unrepresented. Nevertheless, as the respondents have specifically pressed the objection concerning maintainability, this Court proceeds to decide the said issue on the basis of the pleadings and material available on record.

Prayer:

3. The petitioners, through the medium of the present petition, have sought the following reliefs:

“a) Declaring SRO 320 dated 31.08.1985 issued by Secretary to Government Haj & Auqaf along-with all acts, deeds and things done pursuant there-to or in consequent there-of, including all revenue entries, notifications, agreements etc, as bad in law, illegal, unconstitutional, null and void ab-initio.

b) Commanding the Respondents to strike-off all revenue entries made in favour of Auqaf as a consequence to the passage of impugned SRO 320 dated 31.08.1985 issued by Secretary to Government Haj & Auqaf.

c) Commanding the Respondents to retrieve the lands and properties (including the Rent) occupied by the Department of Haj and Auqaf as a consequence to the passage of impugned SRO 320 dated 31.08.1985.

Certiorari:

1) Quashing the communication No.DCP/SQ/1319 dated 02.11.2012 written by Respondent No.2 to Respondent No.5 recommending handing over of 5 Kanals; 13 Marlas land

(MaqboozaMekhama Janglat- Gair Mumking Building) comprised in Khasra No.1436 Shehar Khas Poonch to Auqaf Committee.

Mandamus:

1) Directing the Respondents to retrieve the land measuring 5 Kanals; 13 Marlas (MaqboozaMekhama Janglat- Gair Mumkin Building) comprised in Khasra No.1436 Shehar Khas Poonch from the encroachers/ Auqaf Committee within some specified time frame."

4. Petitioner No. 1 claims to be the President of Shri Sanatan Dharma Sabha, District Poonch. Petitioner No. 2 is an Advocate by profession and is also a social activist, writer and opinion maker. Petitioner No. 3 is a prominent citizen and social worker.
5. The petitioners have preferred the present writ petition being aggrieved of the issuance of SRO 320 dated 31.08.1985 by the respondents, whereby a list of Wakaf properties pertaining to eleven villages of Tehsil Poonch was published.

Brief facts of the case:

6. It is the case of the petitioners that the SRO 320 dated 31.08.1985 was issued in violation of the provisions of the J&K Wakafs Act, 1978, particularly without conducting proper enquiry or preparing the report as required under Section 4(3) of the Act, and according to the petitioners, the respondents, by abuse of statutory powers, included several lands and properties as Wakaf properties in an illegal and fraudulent manner.
7. According to the petitioners, the general public, including the petitioners and even certain Government departments, came to know

about the issuance and implications of the impugned SRO only in March 2017, when the Administrator, Auqaf Islamia, issued an eviction notice dated 24.03.2017 under Section 45 of the J&K Wakafs Act, 2001, to the District Information Officer, Poonch, alleging unauthorized occupation of land measuring 03 Kanals and 08 Marlas comprised in Khasra No. 1389, which was claimed by the Wakaf Department to be Wakaf property.

8. The further case of the petitioners is similar eviction notices and demands were also issued to other Government institutions, including Government Degree College, Poonch, as well as to private individuals, and in certain cases, rent was also demanded by the Wakaf authorities on the basis of the impugned SRO.
9. Petitioners are particularly aggrieved by the inclusion of various Government lands and public utility properties in the impugned SRO, including Government Airfield Ground, Government Degree College ground, Government Media Complex, Government Parade Ground, Deputy Commissioner's Office and residence, Government schools, PWD roads, and other public lands, which, according to the petitioners, were wrongly and fraudulently declared as Wakaf properties.
10. It is also averred that the land measuring 08 Kanals and 07 Marlas comprised in Khasra No. 1436, including land previously belonging to the Forest Department and having a Fire Brigade Building, along with additional vacant land measuring 05 Kanals and 13 Marlas, has been illegally occupied by the Auqaf authorities without lawful

sanction or transfer in their favour. It is stated that the Deputy Commissioner, Poonch, vide communication dated 02.11.2012, recommended grant of additional land measuring 05 Kanals and 13 Marlas in favour of Eid Gah/Auqaf Committee, despite acknowledging that certain lands notified under SRO 320 were actually Government lands pertaining to public institutions and utilities.

11. As per the stand of the petitioners, the said land belonged to the Raja of Poonch and was later recorded as State land, and could not have been declared as Wakaf property. It is alleged that the respondents, in connivance with certain officials, managed to have these lands recorded as Wakaf property in the revenue records, and have initiated steps to assert possession over lands on which Government institutions and public utilities are situated.
12. The petitioners further submit that, upon gaining knowledge of the impugned SRO and its consequences, they submitted various representations dated 11.01.2018, 06.02.2018 and 04.07.2018 before the concerned authorities, seeking revocation of the impugned SRO and conducting of a proper enquiry into the matter. Pursuant thereto, the Deputy Commissioner, Poonch, constituted a committee vide order dated 11.01.2018, which submitted its report to the authorities.
13. The petitioners also raised their grievances before the then Chief Minister during a Public Durbar held at Poonch on 04.03.2018, whereupon directions were issued to the concerned authorities to examine the issue. However, according to the petitioners, no effective

action was taken by the respondents to redress their grievances. Aggrieved of the issuance of impugned SRO 320 dated 31.08.1985, the consequential revenue entries, communications, and actions taken by the respondents asserting Wakaf ownership over various Government and public lands, the petitioners have approached this Court by way of the present writ petition.

14. The petitioners have challenged the impugned SRO and consequential actions, inter alia, on the ground that the State cannot confer illegal benefits on any particular class of persons on communal or religious grounds, as the same would be violative of the principle of secularism and the Right to Equality guaranteed under Article 14 of the Constitution of India. It is contended that the State cannot make improper discrimination by conferring privileges upon a class of persons selected on religious considerations. According to the petitioners, the respondents have acted arbitrarily and in violation of constitutional guarantees by conferring benefits upon a chosen class without lawful justification. It is further contended that the impugned SRO and the impugned communication are also inconsistent with the Directive Principles of State Policy, particularly Articles 38(2) and 39(b) of the Constitution of India.
15. The petitioners have further pleaded that any governmental action which fails to satisfy the test of reasonableness and public interest is liable to be struck down as invalid, and that the State cannot act in a manner which benefits a chosen group at the cost of public interest.

16. The petitioners have also contended that even matters of governmental policy are subject to judicial review, and that any action of the State which fails to satisfy the test of reasonableness would be unconstitutional.
17. The further stand has been taken that the State authorities are bound by the doctrine of public trust and are under an obligation to protect public property and act in public interest, therefore, the impugned SRO and consequential communications constitute an arbitrary and unconstitutional exercise of power and are liable to be declared illegal, null and void.

Submissions on behalf of the respondents:

18. Objections have been filed on behalf of respondent Nos. 1 and 2, wherein it is their specific stand that SRO 320 dated 31.08.1985 was issued strictly in accordance with the provisions of the J&K Wakafs Act, 1978, and that the Wakaf properties existing in District Poonch since decades were duly notified after following the prescribed statutory procedure. It is further submitted that the said SRO was published in the Government Gazette in the year 1985 and has attained finality, and therefore, the petitioners cannot challenge the same after an inordinate delay of more than three decades.
19. It is further submitted by the respondents that the Khasra numbers mentioned by the petitioners are Wakaf properties, which have been duly notified vide the impugned SRO, and that the allegations regarding fraudulent inclusion or illegal entries in the revenue records are incorrect and denied. It is also contended that the

petitioners have no personal or legal interest in the said properties and, therefore, have no cause of action to challenge the same.

20. The respondents have further submitted that Wakaf properties, including graveyards, shrines and Eidgahs, have existed since long and were duly recognized and protected under law. It is submitted that after the enactment of the Wakafs Act, surveys were conducted and Wakaf properties were notified in accordance with law, including through issuance of SRO 320 dated 31.08.1985.
21. It is stated that with regard to land measuring 5 Kanals and 13 Marlas falling under Khasra No. 1436, the existing Eidgah was insufficient to accommodate large gatherings for Eid prayers, and accordingly, a proposal was submitted for extension of the Eidgah. It is submitted that the additional land was provided for this purpose and that the land is presently being used for religious purposes, and a Mosque, namely Masjid Eidgah, has also been constructed thereupon.
22. The respondents have further contended that the Wakaf properties are special properties recognized and protected under law, and that the issuance of the impugned SRO and consequential revenue entries do not violate Article 14 of the Constitution of India. It is submitted that no illegal benefit has been conferred upon any person or group, and that the impugned SRO was issued in conformity with the provisions of the Wakafs Act, 1978 and the Constitution of India.
23. It is also submitted that the impugned SRO and consequential actions have been undertaken in accordance with law and do not suffer from any illegality, arbitrariness or unconstitutionality. The respondents

have denied that the impugned notification or subsequent actions amount to conferment of undue benefit or constitute a colourable exercise of power.

24. Respondent No. 3, i.e., Auqaf Islamia, Poonch, has also filed objections to the writ petition, wherein preliminary objections have been raised regarding the maintainability of the petition. It is contended that the petitioners have no *locus standi* to maintain the instant writ petition, as the properties in question are Wakaf properties and the petitioners have no personal or legal interest in the same. It is submitted that no cause of action has accrued to the petitioners to invoke the writ jurisdiction of this Court.
25. It is further submitted by respondent No. 3 that Auqaf Islamia is an autonomous statutory body and does not fall within the definition of “State” under Article 12 of the Constitution of India, and, therefore, the present writ petition is not maintainable against the answering respondent under Article 226 of the Constitution of India.
26. Respondent No. 3 has also contended that the writ petition involves disputed questions of fact, which cannot be adjudicated upon in writ jurisdiction, and that the petition is liable to be dismissed on this ground as well. It is further submitted that the impugned SRO dated 31.08.1985 has been challenged after an inordinate delay of more than three decades, and as such, the petition is barred by delay and laches and is liable to be dismissed.
27. It is further submitted that respondent No. 3, being a statutory authority under the J&K Wakafs Act, 2001, is duty bound to protect

Wakaf properties and is empowered to take action against unauthorized occupants of such properties. It is submitted that eviction notices issued under Section 45 of the Wakafs Act, 2001 were in accordance with law and within the jurisdiction of the answering respondent.

28. Respondent No. 3 has also submitted that the Khasra numbers mentioned by the petitioners are Wakaf properties which have been duly notified and recorded as such. It is contended that the entries in the revenue records were made in accordance with SRO 320 dated 31.08.1985, and that the Government had also issued necessary circulars directing revenue authorities to update revenue records accordingly.

29. **However, with regard to the land measuring 5 Kanals and 13 Marlas comprised in Khasra No. 1436, same stand has been taken by respondent No. 3 as is taken by respondents 1 and 2.**

30. Respondent No. 3 has further submitted that Wakaf properties are special properties recognized and protected under law, and that the fact that certain portions of Wakaf properties were under occupation of different Government departments or other authorities does not alter the character of such properties. It is contended that respondent No. 3 is legally bound to safeguard and protect Wakaf properties.

Legal Analysis:

31. Heard learned counsel for the parties and perused the pleadings as well as the material available on record.

32. The primary question which arises for consideration is whether the present writ petition is maintainable at the instance of the petitioners and whether the petitioners have the requisite *locus standi* to challenge SRO 320 dated 31.08.1985 and the consequential actions taken pursuant thereto.
33. From a bare perusal of the writ petition, it is evident that the petitioners have neither pleaded nor demonstrated as to how any of their legal, fundamental, or statutory rights have been infringed by issuance of the impugned SRO or by the consequential actions taken by the respondents. The pleadings are conspicuously silent with regard to any personal, direct, or legally enforceable injury suffered by the petitioners. In absence of infringement of any legally protected right, the very foundation for invoking writ jurisdiction under Article 226 of the Constitution of India is rendered unsustainable.
34. It is a settled principle of law that the writ jurisdiction of this Court is primarily meant for enforcement of legal rights and cannot be invoked at the instance of persons who are mere strangers to the subject matter of dispute. The petitioners have not placed on record any material to establish their legal interest in the properties in question, which are admittedly notified as Wakaf properties. Mere assertion that petitioner No. 1 is President of a Sabha, petitioner No. 2 is a social activist, and petitioner No. 3 is a prominent citizen, does not confer upon them any enforceable legal right so as to maintain the present writ petition. In such circumstances, the petitioners cannot be said to be aggrieved

persons having the *locus standi* to invoke the writ jurisdiction of this Court.

35. The Hon'ble Supreme Court in '**Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra and others**', 2013 SCC 4 465, has held that the writ jurisdiction under Article 226 can be invoked only by an aggrieved person whose legal or statutory right has been infringed, and not by a stranger having no enforceable legal right by holding as under:

"Person aggrieved

7. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide The State Of Orissa v. Madan Gopal Rungta. AIR 1952 SC 12, Saghir Ahmad v. State of U.P AIR 1954 SC 728, Calcutta Gas Co.

(Proprietary) Ltd. v. State of W.B AIR 1962 SC 1044, Rajendra Singh v. State of M.P (1996) 5 SCC 460, AIR 1996 SC 2736 and Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C Sekar (2009) 2 SCC 784.]

9. *In Anand Sharadchandra Oka v. University of Mumbai (2008) 5 SCC 217, AIR 2008 SC 1289, a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.*

12. *In A. Subash Babu v. State of A.P (2011) 7 SCC 616, AIR 2011 SC 3031, this Court held:*

“25. ... The expression ‘aggrieved person’ denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant.”

36. This Court also finds merit in the preliminary objections raised by the respondents that the petitioners lack *locus standi* to maintain the present petition. The petitioners have failed to demonstrate any personal, legal, or enforceable right in respect of the subject matter of the writ petition. No material has been placed on record to show that any legal injury has been caused to them or that any cause of action has accrued in their favour. In absence of infringement of any legal right, the petitioners cannot be held to be aggrieved persons so as to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India.

37. The Hon’ble Apex Court in **‘Kishore Samrite vs. State of U.P. and others’, (2013) SCC 2 398**, has held as under:

“52. On the analysis of the above principles, it is clear that a person who brings a petition even for invocation of a fundamental right must be a person having some direct or indirect interest in the outcome of the petition on his behalf or on behalf of some person under a disability and/or unable to have access to the justice system for patent reasons. Still, such a person must act bona fide and without abusing the process of law. Where a person is a stranger/unknown to the parties and has no interest in the outcome of the litigation, he can hardly claim locus standi to file such petition. There could be cases where a public-spirited person bona fide brings petition in relation to violation of fundamental rights, particularly in habeas corpus petitions, but even in such cases, the person should have some demonstrable interest or relationship to the involved persons, personally or for the benefit of the public at large, in a PIL. But in all such cases, it is essential that the petitioner must exhibit bona fides, by truthful and cautious exercise of such right. The courts would be expected to examine such requirement at the threshold of the litigation in order to prevent abuse of process of court. In the present case, both the appellant and Respondent 8 are total strangers to the three mentioned petitioners. The appellant, in fact, is a resident of Madhya Pradesh, belonging to a political party and was elected from Constituency Tehsil Lanji in District Balaghat at Madhya Pradesh. He has no roots in Amethi and, in fact, he was a stranger to that place. The appellant as well as Respondent 8 did not even know that the persons on whose behalf they have acted as next friend had shifted their residence in the year 2010 to Hardoia in District Faizabad. They have made false averments in the petition and have withheld true facts from the Court.”

38. Similarly, in **‘Jasbhai Motibhai Desai vs. Roshan Kumar and others’**, (1976) SCC 1 671, has held as under:

“34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a

personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter, (see The State Of Orissa v. Madan Gopal Rungta. AIR 1952 SC 12, 1952 SCR 28; Calcutta Gas Co. v. State of W.B AIR 1962 SC 1044, 1962 Supp (3) SCR 1; Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa (1967) 1 SCA 413; Gadde Venkateswara Rao v. Government of A.P AIR 1966 SC 828, (1966) 2 SCR 172; State of Orissa v. Rajasaheb Chandanmall (1973) 3 SCC 739; Satyanarayana Sinha Dr v. S. Lal & Co. (1973) 2 SCC 696)."

39. Applying the aforesaid settled legal principles to the facts of the present case, this Court is of the considered view that the petitioners have failed to establish any legal right or legally protected interest in respect of the subject matter of the writ petition. The petition, therefore, suffers from lack of *locus standi* and is not maintainable.
40. Apart from the issue of *locus standi*, this Court also finds that the writ petition involves serious disputed questions of fact relating to the nature, character, and ownership of the properties in question, and the validity of revenue entries made pursuant to the impugned SRO. Such questions require appreciation of evidence and adjudication upon disputed factual issues, which cannot be undertaken in exercise of writ jurisdiction under Article 226 of the Constitution of India.
41. The Hon'ble Supreme Court in "**Board of Wakf, West Bengal vs. Anis Fatma Begum and another**", 2010 SCC 14 588, held as under:

“10. In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution of India.”

42. Another significant aspect which renders the present writ petition liable to be dismissed is the inordinate and unexplained delay in challenging the impugned SRO. The impugned SRO was issued on 31.08.1985 and has remained in force for more than three decades. The present writ petition has been filed after an extraordinary lapse of time without furnishing any satisfactory explanation for such delay.

43. It is well settled that writ jurisdiction is discretionary and equitable in nature, and a person who approaches the Court after an inordinate and unexplained delay is not entitled to invoke such extraordinary jurisdiction. The Hon’ble Supreme Court in **“Mrinmoy Maity vs Chhanda Koley and others”**, **Civil Appeal No. 5027/2024**, decided on 18.04.2024, has held that writ petitions filed after considerable and unexplained delay are liable to be dismissed on the ground of delay and laches alone by holding as under:

“9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and laches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one

of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action."

44. Similarly, in '**Chennai Metropolitan Water Supply & Sewerage Board and others vs. T.T. Murali Babu, (2014) 4 SCC 108**, has held as under:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

Conclusion:

45. In the present case, the impugned notification has attained finality over a long period of time, and entertaining such belated challenge

would unsettle settled rights and legal positions, which is impermissible in law.

46. In view of the aforesaid discussion, and without entering into the merits of the controversy, this Court is of the considered opinion that the petitioners have failed to establish that they are aggrieved persons having the requisite *locus standi* to maintain the present writ petition. The writ petition is, accordingly, held to be not maintainable.
47. Accordingly, the writ petition stands *dismissed* along with all connected applications, if any.

(Wasim Sadiq Nargal)
Judge

Jammu:

25.02.2026

Michal Sharma/PS

Whether approved for reporting : *Yes/No*
Whether order is speaking : *Yes*