

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

OWP No.55/2015

Date of Order:31.01.2018

Aamir Rafiq Chowdary

**Vs.**

State of J&K & ors.

**Coram:**

**Hon'ble Mr Justice Sanjeev Kumar, Judge.**

**Appearance:**

For the Petitioner(s): Mr. Javaid Samad, Adv.

For the Respondent(s): Mr. M. A. Wani, Sr. AAG.

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|-----|---|--------|
| i)  | Whether approved for reporting in<br>Law journals etc.: | Yes/No |
| ii) | Whether approved for publication<br>in press:           | Yes/No |

**(ORAL)**

- 1) Petitioner, in this petition, has, *inter-alia*, prayed for following reliefs:
  - a) Writ of Mandamus commanding the official respondents 1 to 6 to ensure that no construction is raised by the private respondents over the patch of 100 feet wide state land falling under survey No.90 in front or adjacent to the land of the petitioner in any manner;
  - b) Writ of Mandamus commanding the respondent nos.5 & 6 to register an FIR against the private respondents for illegally trying to encroach upon the State land;
  - c) Writ of Mandamus commanding the official respondents to remove all the encroachments made by the private respondents over the state land and the land of the petitioner immediately.

2) The case set up by the petitioner in this petition is that his father purchased a piece of land measuring 1 kanal 12 marlas falling under Survey No.449/364/84 situated at Barthana Parimpora Srinagar, in the year 1977 and between the land of the petitioner and main road, there is a patch of State land approximately 100 feet wide falling under survey No.90. It is contended by the petitioner that on this State land, there is a public drainage system of the area and besides that, the villagers having their houses alongside have been using this land as a pathway for their ingress and egress to the main road.

3) The grievance projected in this petition is that the respondent Nos.7 to 11, without having any lawful authority, have tried to encroached upon the State land and had even succeeded in raising construction of some shops illegally. The petitioner claims that he approached the concerned authorities and with their intervention further construction was stopped. He, however, submits that illegal structure still exists on the State land and it is the solemn obligation of the State authorities to remove illegal encroachment from the State land aforesaid.

4) Considered the submissions made by the learned counsel for the petitioner and also heard Mr. Wani, Sr. AAG for the State.

5) The dispute raised in this petition essentially calls for adjudication of some disputed facts and, therefore, this Court may not be a proper forum for adjudication of the same under Article 226 of the Constitution. However, grievance of the petitioner that the respondents 7 to 11 have encroached upon State land and have raised structure thereon needs to be looked into. The

State is under a legal obligation to protect the State land from illegal encroachment. However, while removing said encroachment, the citizens who are found to be in illegal possession are entitled to be heard and due process of law is required to be followed. That being the position, this petition, with the consent of learned counsel for the parties, is **admitted** and **disposed** of by directing the respondent No.2 to hold an enquiry to find out as to whether there is any encroachment made by respondents 7 to 11 or some other person on the State land as claimed by the petitioner. If upon enquiry, the respondent No.2 finds that the State land has actually been encroached upon by respondents 7 to 11 or somebody else and there is some structure raised thereon, it shall be the duty of respondent No.2 and other concerned authorities to remove the structure and clear the State land from all encroachments. Needless to say, while removing encroachments or dispossessing illegal occupants, respondent No.2, besides following principles of natural justice, shall also act strictly in accordance with law.

**(Sanjeev Kumar)**  
**Judge**

**Srinagar**  
**31.01.2018**  
***"Bhat Altaf, PS"***