

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

LPA No. 314/2025 in WP (C) No. 1260/2025

Reserved On: 5th of February, 2026.
Pronounced On: 20th of February, 2026.
Uploaded On: 20th of February, 2026.

Whether the operative part or
full Judgment is pronounced: **Full.**

Noor Illahi Fakhtoo, Age: 50 Years
S/O Late Bashir Ahmad Fakhtoo
R/O House 18, Sector-B, Umerabad,
Peerbagh, Srinagar.

... Appellant(s)

Through: -

Mr G. A. Lone, Senior Advocate with
Mr Mujeeb Andrabi, Advocate.

V/s

1. UT of Jammu & Kashmir through Commissioner/ Secretary to Government, Revenue Department, Civil Secretariat, Srinagar-190001.
2. Financial Commissioner (Revenue), J&K, Srinagar.
3. Dy. Commissioner, Srinagar.
4. District Magistrate, Srinagar.
5. Addl. Dy. Commissioner, Srinagar.
6. Tehsildar, Chanapora/ Natipora, Srinagar.

... Official Respondents

7. Sh. Ashok Kumar Koul
S/O Sh. Som Nath Koul
R/O Talab Tilloo, Jammu.

... Private Respondent

Through: -

Mr Salih Pirzada, Advocate with
M/S Ahmad Basaud & Bhat Shafi, Advocates for R-7.

CORAM:

**HON'BLE MS JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE**

(JUDGMENT)

SHAHZAD AZEEM-J:

01. This *intra* Court appeal is directed against the Order dated December 10, 2025, passed by the learned Single Judge [“the Writ Court]

in CM No. 3354/2025 filed in WP (C) No. 1260/2025 titled '**Noor Illahi Fakhtoo v. Union Territory of J&K and Ors.**', whereby the application for *ad-interim* relief came to be dismissed as having been rendered *infructuous*, by holding that the eviction has already been carried out by the Naib Tehsildar, Sanat Nagar and also that estoppel by judgment is applicable to the Writ Petition.

02. The present case has a chequered history and also having been infested with multiple rounds of litigation, nonetheless, the appeal on hand is directed against an Order whereby the Writ Court has denied the *ad-interim* relief, therefore, we deem it proper to restrict the facts as are relevant to the controversy on hand.

03. Succinctly stated, the Appellant-Petitioner is stated to have purchased a piece of land situate at Revenue Estate Hyderpora, measuring 17 Marlas, falling in Survey No. 764 (old) in the year 1996 and, consequently, a sale deed came to be executed on September 20, 1996, whereupon he has constructed a house after obtaining requisite permission from the Srinagar Municipal Corporation that was issued on May 01, 2004. For more than two decades, the Appellant has been residing in the house along with his family, including his two school-going children ever since.

04. The entire estate of Hyderpora stated to have come under settlement operation in the year 2010 and, thus, was declared as '*Abadideh*' area and, as such, the operation of SO 34 dated January 25, 2022, i.e., the Jammu & Kashmir Abadideh Survey and Record Operations Regulations, 2022 ["Regulations of 2022"], has been extended to the entire revenue estate of Hyderpora, including the plot of the Appellant.

05. The miseries of the Appellant alleged to have popped up when he received a notice dated November 05, 2019 of Tehsildar, Chanapora/Natipora, in compliance to the Order dated January 12, 2018 issued by District Magistrate, Srinagar, requiring the Appellant to vacate the plot in question. It is noteworthy that this action of the Respondents No. 4 and 6

was taken in compliance to the Order dated April 28, 2017 passed by the High Court in OWP No. 1232/2009, titled '**Ashok Koul v. State of J&K and Ors.**', which was filed by Respondent No. 7 herein, though the Appellant was not party in that Writ Petition.

06. It is seen that the District Magistrate, Srinagar, appears to have constituted a committee of Revenue officers and the said team has further constituted a sub-committee of officers for on spot demarcation of land falling in Survey No. 524, and, accordingly, the Tehsildar, Chanapora submitted a report dated November 11, 2017, by holding that out of 19 Marlas of land falling in Survey No. 524, owned by Ashok Koul, 02 Marlas each is in the possession of Masjid Sharif and thoroughfare respectively, whereas, remaining 15 Marlas of land is in the possession of Noor Illahi Fakhtoo-Appellant herein. Therefore, on the basis of the report of the sub-committee, the District Magistrate, after holding that 19 Marlas of land of Ashok Koul being under the illegal occupation, vide Order dated January 12, 2018, directed Tehsildar, Chanapora to take over the possession of the land of Ashok Koul under the provisions of the Jammu & Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 [hereinafter referred to as "Act of 1997"] on behalf of the District Magistrate, till further orders.

07. At this stage, a short reference to OWP No. 1232/ 2009 titled '**Ashok Koul v. State of J&K and Ors.**' is necessitated. The said Petition was filed by Respondent No.7 herein-Ashok Koul, precisely seeking a 'Writ of Mandamus' commanding the Respondents to remove the unauthorized occupation/ encroachment from his immovable property, i.e., land measuring 19 Marlas, falling under Khasra No. 524 Min, Khewat No. 138, situated at Hyderpora (Peerbagh), Airport Road, Srinagar, while taking resort to Section 5 of the Act of 1997, and also sought direction unto the Respondents to preserve the said property of the Petitioner.

08. The Writ Court, vide Order dated April 28, 2017, directed the Deputy Commissioner, Srinagar to take action in terms of Section 5 of the

Act of 1997 and to remove the unauthorized occupation from the land, measuring 19 Marlas within a period of three months. Accordingly, it is this Order dated January 12, 2018 (reference whereof made hereinbefore) came to be passed by the District Magistrate, Srinagar. Aggrieved of the Order dated April 28, 2017 passed in OWP No. 1232/2009 and the consequent Order dated January 12, 2018 of District Magistrate, Srinagar, whereby possession of the land of the Appellant was ordered to be taken over, a Writ Petition-WP (C) No. 3379/2019, titled '**Noor Illahi Fakhtoo v. UT of J&K and Ors.**', came to be filed by the Appellant herein, *inter alia*, questioning the legality of the Order passed by the Writ Court and also the consequent action of the District Magistrate taken vide Order dated January 12, 2018.

09. To be brief, the grievance of the Petitioner in WP (C) No. 3379/2019 (Appellant herein) was with regard to violation of rules of natural justice and fairness enshrined under Article 14 of the Constitution, qua the enquiry held regarding possession and ownership in respect of land in question; **secondly**; that the Order passed by the Writ Court dated April 28, 2017 has been obtained by suppression and concealment of facts, as the Appellant being necessary party was not impleaded as party Respondent; and, **thirdly**; that the District Magistrate, Srinagar did not conduct the enquiry as per law himself, but relied upon the report of the sub-committee that is not permissible under law. Apart from these contentions, the Appellant also delineated the factual narration including that he is a *bonafide* purchaser of the land in question and further that a house has been constructed pursuant to the permission duly granted by the competent authority. Though other factual pleas were also raised, but note whereof shall be taken at appropriate stage, if need is felt.

10. Accordingly, in the said Petition, the Writ Court framed three issues for consideration: the first issue was with regard to non-impleadment of the Appellant as party respectively OWP No. 1232/2009 titled '**Ashok Koul v. State of J&K and Ors.**'; **secondly**; by constituting sub-committee of Revenue officers the Deputy Commissioner, Srinagar, i.e., the designated

Authority has delegated his statutory functions; and **thirdly**; as to whether the Order passed by the Deputy Commissioner, Srinagar dated January 12, 2018 is violative of rules of natural justice.

11. Accordingly, the Writ Court has considered the matter and finally held that the Respondent No.5-Ashok Koul (Respondent No.7 herein) can neither be said to have made any misrepresentation nor concealment of facts, while obtaining the Judgment/ Order dated April 28, 2017 passed in OWP No. 1232/2009 and further went on to hold that in terms of Section 6 of the Act of 1997, the District Magistrate has also got demarcation done through the field staff, which indisputably is not forbidden in terms of Section 6 of the Act of 1997. Likewise, on the third issue of non-adherence of the rules of natural justice, the Writ Court held that the Petitioner (Appellant herein) did not show anything either in the Writ Petition or from the material annexed therewith that the result of such demarcation would have been different, had he been associated in the said process.

12. It is important to note that after returning findings on the aforesaid three issues, what the Writ Court has observed assumes importance and, for reference, reads as follows:

“Be that as it may, this Court refrains from expressing any opinion as to the merits of the claim lodged by the Petitioner qua the land in question as also by the Respondent No.5 herein, as merits are not for this Court to be decided, but for the designated authority under the Act of 1997 to consider.”

13. Accordingly, the Writ Petition was disposed of by directing the Deputy Commissioner, Srinagar to provide adequate opportunity of hearing to the Petitioner (Appellant herein) as post-decisional hearing in the matter and further that the Petitioner (Appellant herein) shall be at liberty to avail such hearing either in person or through his Counsel and also shall be free to produce all/ any documents/ material in support of his case. The Writ Court also directed that till the conclusion of the aforesaid hearing, the

operation of impugned Order dated January 12, 2018 read with notice dated November 05, 2019 shall remain in abeyance.

14. Thereafter, the District Magistrate, Srinagar, in compliance to the Judgment dated June 07, 2023, passed in WP (C) No. 3379/2019, issued Order dated May 22, 2025, whereby the District Magistrate, Srinagar, on the basis of enquiry report, found no reason to reverse or modify the earlier Order dated January 12, 2018 and, accordingly, the application of the Appellant was dismissed and further, Tehsildar, Chanapora/ Natipora was directed to proceed in the matter as per the directions already issued vide Order dated January 12, 2018.

15. It was this Order dated May 22, 2025 which came to be assailed by the Appellant by way of WP (C) No. 1260/2025, titled '**Noor Illahi Fakhtoo v. UT of Jammu & Kashmir and Ors.**', and further sought direction for declaring the Petitioner (Appellant herein) to be the owner in possession of the land falling under Survey No. 379 (new) along with residential house and also to issue certificate of ownership in terms of Regulation 36 of the Regulations of 2022, etc. An application for grant of *ad-interim* relief, being CM No. 3354/2025, also came to be filed, seeking stay of the operation of impugned Order dated May 22, 2025. The Writ Court, vide Order dated December 10, 2025, subject matter of challenge in the instant appeal, has dismissed the application, mainly on the ground that the issue raised in the Petition regarding alleged non-recording of subjective satisfaction by the Deputy Commissioner, Srinagar and as to whether Deputy Commissioner, Srinagar can delegate his power to the subordinate or rely on the report of his subordinate has already been examined and conclusively determined by a learned Single Judge in WP (C) No. 3379/2019 and that the Petitioner (Appellant herein) has accepted those findings, therefore, he is estopped under law from reopening or re-agitating the same question before another Bench exercising concurrent jurisdiction. The Writ Court further held that in compliance to the directions passed by the learned Single Judge, the opportunity of hearing to the Petitioner, as a

post-decisional hearing in the matter, was provided, but the Petitioner failed to produce any such material which could have enabled the Deputy Commissioner, Srinagar to take a view different from the earlier view taken vide Order dated January 12, 2018. The further reasoning prevailed with the Writ Court that the Appellant did not lay a proper motion challenging the eviction notice, therefore, held that the Court is not in a position to record any finding or to protect the *lis*, as prayed for by the Counsel for the Petitioner. And, most importantly, the Writ Court, while dismissing the application, observed that since the prayer for interim protection no longer survives as eviction of the Petitioner has already been carried out, therefore, interim protection no longer survives.

16. Though, in the memo of appeal, detailed factual narration is given, but we do not deem it proper to delineate all those details, however, note whereof shall be taken hereinafter, as and when deemed necessary. Mr G. A. Lone, the learned Senior Counsel appearing for the Appellant, also has made submissions on the same lines, however, while summing up he has, canvassed at Bar that the Writ Petition was filed much before the eviction notice dated December 06, 2025, which was sent on the *WhatsApp* number of the Appellant and, while hearing of the appeal was in progress on December 10, 2025, the eviction Order came to be passed by the Respondents, thereby they have clandestinely locked the house of the Appellant and, consequently, passed Order dated December 10, 2025, whereby Naib Tehsildar, Sanat Nagar has submitted compliance that he carried out the eviction of the occupants from the property (a double-storied residential house), constructed on landed property measuring 15 Marlas under Survey No. 379 at estate Hyderpora belonging to Ashok Koul S/O Shri Soom Nath Koul R/O Talab Tillu, Jammu. Therefore, the learned Counsel submits that there was no occasion for the Appellant to take appropriate steps challenging these eviction notices, nonetheless, he has filed application, being CM No. 8219/2025, placing on record the eviction notice dated December 06, 2025 and also apprised the Writ Court about the

said fact, but same has not been taken into consideration while dismissing the application for *ad-interim* relief.

17. *Per contra*, the learned Counsel appearing for the contesting Respondent No.7 had mainly laid stress on the issue of constitution of sub-committee by the Deputy Commissioner, Srinagar for demarcation of the land in question and that same has already been decided by the Writ Court in the earlier round of litigation, therefore, the Appellant is estopped from raising the same point again. The learned Counsel vehemently argued that the Appellant was provided with adequate opportunity of being heard, but he failed to produce the relevant documents, so as to prove that he is the owner in possession of the land in dispute. Therefore, on these issues, the findings already returned by the Writ Court in WP (C) No. 3379/2019 have assumed finality and, thus, the Appellant is precluded from re-agitating the same.

18. Heard. Considered.

19. It is beaten law of the land that for the grant of *ad-interim* relief/ injunction, the globally acknowledged principles are collectively known as “**triple test**” or “**three golden principles**” and these three cardinal factors that are deeply embedded in Indian jurisprudence as well are: ‘*prima facie* case’; ‘balance of convenience’ and ‘irreparable injury’. In this regard, a reference can be made to the Judgment of Hon’ble Supreme Court in ‘**State of Kerala v. Union of India, (2024) 7 SCC 183**’.

20. In the wake of the law governing the *ad-interim* relief, inter alia, the point that falls for our consideration is that as to whether the Writ Court, while dismissing the interim application, has rightly taken into consideration the question of estoppel by judgment and further that the District Magistrate has duly performed his statutory duties, while relying on the report of the field officers/ staff having regard to the findings returned by the Writ Court in the earlier round of litigation in WP (C) No. 3379/2019, wherein the Writ Court held that the Deputy Commissioner,

Srinagar has not delegated his *quasi-judicial* function while issuing the impugned Order dated January 12, 2018, but has only got demarcation done through the field staff which indisputably is not forbidden in terms of Section 6 of the Act of 1997.

21. Keeping in view the broader principles of law governing the *ad-interim* relief, when we have waded through the Order dated May 22, 2025, passed by the District Magistrate Srinagar, i.e., impugned Order before the Writ Court, it appears that, while dismissing the application of the Appellant-Noor Illah Fakhtoo, the Magistrate has relied upon the report submitted by the Tehsildar, Chanapora based on the demarcation done by the team of officers constituted by the Tehsildar. So, there was delegation and sub-delegation of power in constituting the team of Officers also.

22. In the Order dated, May 22, 2025, the District Magistrate, Srinagar observed that the Tehsildar, Chanapora has constituted a team for demarcation, which clearly reported that the Applicant-Noor Illahi Fakhtoo is residing in Survey No. 379 (Abadideh) since 1996 and, as per sale deed, the Applicant has land measuring 17 Marlas falling in Survey No. 764 (old), which has been assigned new Survey No. 387 and Survey No. 524 (old) has been assigned new Survey No. 379, respectively. It has been further observed by the District Magistrate, Srinagar that the constituted team has further reported that Noor Illahi might have been provided with the documents of old Survey No. 764 (new 387) but he has been in possession of Survey No. 524 min old (379 new). He further went onto observe that the Applicant, despite having been given adequate opportunity of hearing, could not provide sufficient material that the piece of land he has occupied is recorded in his name and not in the name of Ashok Koul, therefore, finally dismissed the application.

23. We have taken into consideration only those observations of the District Magistrate, Srinagar which weighed with him while dismissing the application filed by Appellant herein. There is no dispute to the fact that the District Magistrate can take the assistance of the subordinate Officers or

field staff in terms of Section 6 of the Act of 1997 for conducting the survey, including measurements, but the questions that property is migrant property and the possession of the occupant is unauthorized are the questions which are to be assessed by the District Magistrate subjectively as a designate Statutory Authority and the said power certainly is not capable of being delegated to any other Authority or officer under him, which necessarily means that the enquiry culminating into his subjective satisfaction to enable him to exercise the power vested in him is to be conducted by him as “*persona designata*” and not through any other agency whatsoever, even though such an agency may be employed by him for rendering necessary assistance for collection of materials to arrive at a conclusion.

24. Practical assistance from subordinates is allowed and is also necessary in large administrations, but the Statutory Authority cannot abdicate its duty or act as a rubber stamp. The final decision must reflect the Authority’s own mind and the Order must ordinarily disclose reasons in reference to the material considered by it to withstand judicial scrutiny. A statutory duty cast on a Statutory Authority cannot be fully got done through a subordinate in the sense of delegating the core decision-making power and full reliance cannot be placed on a subordinate officer’s report without independent application of mind by the Authority.

25. However, *prima facie*, it appears that even if one were to read the Order dated May 22, 2025 passed by the District Magistrate, Srinagar with naked eye, it would lead to the irresistible conclusion that the District Magistrate relied upon a vague and cryptic report of field officials wherein it was reported that Noor Illahi might have been provided with documents of old Survey No. 764 (new 387) and has been in possession of Survey No. 524 Min old (379 new). However, the District Magistrate, Srinagar still banked upon this half-baked report of the field staff by taking it as a gospel truth and went onto dismiss the application of the Appellant. We also find that the Appellant has produced before the competent authority the requisite

documents to substantiate his *bonafide* claim over the land in question, including, site plan along with registered sale deed, so as to show that there is complete dissimilarity between the shape and the site of both of the plots, and also produced the building permission, so much so, a detailed application also came to be filed with the request for demarcation of *Abadideh* land (State land) in accordance with the provisions of the Regulations of 2022, but it appears that same have not been taken into consideration, rather, by a one-liner, gave short shrift to the material and also to the request of the Appellant for demarcation of the land in terms of the Regulations of 2022, by holding that SO 34 dated January 25, 2022 is with regard to survey and record operations of the Village *Abadideh* and not for the demarcation of proprietary land, as pleaded by the Counsel for the Applicant.

26. The primary object and purpose of the Regulations of 2022 is to systematically survey, identify, map and record rights in *Abadideh* areas to achieve, *inter alia*, verifiable records of rights, including ownership, possession and structures for properties in rural inhabited areas, which historically often lack formal revenue documentation or have outdated/incomplete records. The further underlying object of these Regulations is to identify and demarcate *Abadideh* plots, structures, Government/ semi-Government lands, etc., which is discernible from Regulations 22 and 23 respectively, that deal with determination of unique code of *Abadideh* plots and recording of category and sub-category of *Abadideh* area. Therefore, *ex-facie*, District Magistrate, Srinagar proceeded on an erroneous assumption and also in a mechanical manner, oblivion of the very object of the Regulations of 2022 and *sans* any independent application of mind, as enjoined under the Act of 1997.

27. The Order impugned before the Writ Court came to be passed in compliance to the directions passed, in WP (C) No. 3379 of 2019, therefore, as to whether it was barred by estoppel by conduct or judgment, or that as to whether or not the Appellant had submitted any satisfactory

material during the post-decisional hearing, these are the arguable points, therefore, merits of the case could not have been gone into at the stage of considering the application for *ad-interim* relief. What was expected at the stage is to see as to whether there is a *prima facie* case, which should not be confused with the *prima facie* title, as it focuses on the need for further adjudication, rather than establishing ownership or rights at the outset.

28. The case set up by of the Appellant is that he has purchased the land that falls in Survey No. 764 (old) and the land purchased by the Respondent No.7 falls in Survey No. 524 (old), whereas, after settlement, the old Survey No. 524 came to be divided into new Survey Nos. viz. 377, 377/1 and 378 and same is also observed in para 5 by the Writ Court in its Order dated June 07, 2023. According to the Appellant, the old Survey No. 764 is given new Survey No. 379, but surprisingly, at the last moment in the Order dated May 22, 2025 and contrary to the earlier reports of the Deputy Commissioner and also without any basis, Survey No.764 (old), shown to have been assigned Survey No. 387 (new), instead of 379 (new).

29. Again, another very important aspect, perhaps missed the attention of the Writ Court is that in WP (C) No. 3379/2019, the Writ Court, while concluding, specifically held that it refrains from expressing any opinion as to the merits of the claim lodged by the Petitioner (Appellant herein) *qua* the land in question as also by the Respondent No.5 (Respondent No.7 herein), as merits are not for this Court to be decided, but for the designated Authority under the Act of 1997 to consider. In this view of the matter, the observations of the Writ Court regarding estoppel by conduct and further that the Appellant had failed to produce material before the District Magistrate in support of his claim are the observations having been made too early in the day, particularly while considering the application for *ad-interim* relief, therefore, same are not sustainable.

30. After going through the memo of appeal and hearing the learned Counsel for the parties, we are of the opinion that the Appellant has an arguable case, *prima facie* on the point of applicability of estoppel;

alteration and change of Survey numbers, which, on the face of it, are based on conflicting findings of the revenue authorities; nature, scope and extent of power of the competent authority under the Act of 1997 and extent of its delegation; the legality of dismissal of the application of the Appellant for demarcation of *Abadideh* land by modern technology like geo-reference in accordance with the Regulations of 2022. The Order dated 22, 2025, passed by the District Magistrate, Srinagar is silent on the point as to the location, size, shape, of the plot of land owned by the Appellant as well as Respondent No.7, particularly when the Appellant, all along, is crying that there is no similarity between the plot owned and possessed by him and that of Respondent No.7, as one is situate at the northern side of the road and the other is at the southern side. There is no whisper worth the name on all these important issues.

31. At least, before us, the learned Counsel appearing for the Appellant as well as Respondent No.7 are at *ad idem* on the point that the Appellant as well as Respondent No.7 are the *bonafide* purchasers, but only it has to be seen whether the Appellant is occupying the same plot regarding which sale deed was executed or to the contrary he is in physical possession of plot purchased by Respondent No.7. However, all these questions only could have been considered at the time of hearing of the case on merits, after hearing and taking into consideration the pleadings of the parties, but findings returned by the Writ Court while considering application for interim relief falls beyond the scope of interim relief, which is only meant to preserve the *lis* till its final adjudication.

32. While going through the case file, we had come across the Response filed by official Respondents in WP (C) 3379/ 2019 titled '**Noor Illahi Fakhtoo v. UT of Jammu & Kashmir and Ors.**', duly signed by Deputy Commissioner, Srinagar, wherein, *inter alia*, it has been submitted that as per the pre-settlement records of Revenue Estate, Hyderpora, Srinagar, the Respondent No.5 (Respondent No.7 herein) has purchased land measuring 19 Marlas under Survey No. 524 (old) in the said estate by

virtue of instrument of sale from Jay Kishori wife of Pandit Brij Nath and duly mutated vide mutation Order No. 2914. In the said Response, it is further stated that the settlement operation of the Revenue Estate Hyderpora was initiated and concluded thereof and, by virtue of which, Survey No. 524 (pre-settlement) has got merged/ divided into new Survey Nos. 377, 377/1 and 378, which fact also finds its mention in the Order passed by the Writ Court in WP (C) 3379/2019. Therefore, it is now required to be seen as to how come the District Magistrate, Srinagar, in the impugned Order dated May 22, 2025 before the Writ Court, mentioned that old Survey No. 764 has been assigned a new Survey No. 387 and old Survey No. 524 (pertaining to Respondent No.7) has been assigned new Survey No. 379, which *prima facie* speaks of non-application of mind and, as such, on such perfunctory report, the Appellant cannot be deprived of his shelter, wherein he has been residing along with his family, including school-going children, for the last more than 20 years on the basis of duly executed sale deed and after obtaining proper permission from the competent authority.

33. The learned Counsel for the Appellant, during the course of arguments and which fact is also borne out from the pleadings, submitted that the eviction process has been carried out by locking the premises and, in this process, even the household items of the Appellant, including clothing of his family members, cooking utensils, beddings, etc., have also been locked inside the house. It has been further stated that the school-going children have been deprived from studying because their books are also lying in one of the rooms of the locked house.

34. In the case on hand, on the basis of the pleadings of the parties and documents available on record, we are of the opinion that there is a strong *prima facie* evidence in favor of the Appellant as a *bonafide* purchaser of the land in question, who has raised the construction on the basis of valid permission and also balance of convenience tilts in his favor as the Appellant has invested in construction and, by now, for a pretty long time, his family, including school-going children, have been residing there,

therefore, any displacement till the Court finally decides the matter on merits is surely going to cause irreparable injury. Since, the Appellant has made out and raised an arguable case, therefore, a case for intervention by way of *ad-interim* relief is found to have exist convincingly.

35. Admittedly, the Respondent No.7 has staked his claim over open plot of land, whereas, the Appellant has by now constructed house after following due process of law and is residing there for last 20 years. Therefore, once he approached the Writ Court calling in question the action of the statutory authority on various grounds, thereby raising arguable points, in that event, the action of the District Magistrate to take away the shelter of the family of the Appellant was required to be interdicted in exercise of judicial review.

36. The Hon'ble Supreme Court, in '**Benedict Denis Kinny v. Tulip Brian Miranda & Ors., Smt. Prachi Prasad Parab v. State of Maharashtra & Ors., AIR 2020 Supreme Court 3050**', while dealing in *extenso* with the powers of the judicial review of the High Court under Article 226 of the Constitution of India, inter alia, held as follows:

“XXXXX

(i) The power of judicial review vested in the High Courts under Article 226 and this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution and is basic structure of our Constitution. The jurisdiction under Article 226 is original, extraordinary and discretionary. The look out of the High Court is to see whether injustice has resulted on account of any decision of a constitutional authority, a tribunal, a statutory authority or an authority within meaning of Article 12 of the Constitution.

(ii) The Courts are guardians of the rights and liberties of the citizen and they shall fail in their responsibility if they abdicate their solemn duty towards the citizens. The scope of Article 226 is very wide and can be used to remedy injustice wherever it is found.

(iii) The power under Article 226 of the Constitution overrides any contrary provision in a

Statute and the power of the High Court under Article 226 cannot be taken away or abridged by any contrary provision in a Statute.

(iv) When a citizen has right to judicial review against any decision of statutory authority, the High Court in exercise of judicial review had every jurisdiction to maintain the status quo so as to by lapse of time, the petition may not be infructuous. The interim order can always be passed by a High Court in exercise of writ jurisdiction to maintain the status quo in aid of the relief claimed so that at the time of final decision of the Writ Petition, the relief may not become infructuous.

xxxxx”

37. Interim relief is intended to preserve the subject matter of litigation and to prevent irreparable injury during the pendency of the proceedings. Denial of such protection, particularly in cases involving deprivation of residential premises, must be exercised with utmost circumspection. Courts are duty-bound to ensure that judicial proceedings do not become illusory by permitting irreversible situations to arise pending adjudication.

38. At this stage, while looking to the facts and circumstances of the case on hand, what has been observed by the Hon’ble Supreme Court in **‘Deoraj v. State of Maharashtra & Ors., AIR 2004 SC 1975’**, also assumes relevance and reads, thus:

“12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And, then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main Petition itself; for, by the time the matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour.

xxxxx”

39. Here is a case which shocks the conscience of the Court when indisputably it is shown to the Court that the authorities have locked the house along with all household items, including study books belonging to the school- going children, during the eviction process, especially when the

High Court was hearing the case on the same very day. Therefore, we are of the considered opinion that the Appellant is entitled to the interim protection because denial thereof has resulted in loss of shelter and severe disruption of his family, which fly in the face of 'Right to Life', guaranteed under Article 21 of the Constitution of India.

40. Notwithstanding the point regarding legality of the sale deed of the piece of land over which ownership right has been claimed by the Respondent No.7-Shri Ashok Koul, being in contravention of Section 31 (pre-amended) of the Agrarian Reforms Act, 1976, is raised, but we leave all these questions to be decided by the Writ Court while adjudicating the matter finally on merits.

41. All along, the claim of the Respondent No. 7 is that he is a 'Migrant', as described under the Act of 1997, as such, is entitled to protection of his immovable property from encroachment in terms of Section 5 of the Act of 1997, nonetheless, the competent authority is firstly required to adjudicate the status of the Respondent No.7 as a 'Migrant' and only then, the applicability of the Act of 1997 would come into play. But this point also needs consideration, which, in our opinion, forms the fulcrum of the controversy in question.

42. In view of the preceding analysis, the present appeal is **allowed** and the impugned Order dated December 12, 2025 passed by the learned Writ Court is set aside. The Order No. DMS/RD-732/Mig/114 dated May 22, 2025 passed by District Magistrate, Srinagar as well as eviction notice No. 1841-44/OQ/TCH/25 dated December 06, 2025 issued by Tehsildar Chanapora/ Natipora shall remain in abeyance. Resultantly, *status quo ante* is granted in favor of the Appellant and the Respondents No. 3 and 4 are directed to hand over the keys of the house to the Appellant, after preparing an inventory of the household items. We make it clear that the observations made in this Judgment shall not be construed as expression of opinion with regard to the merits of the case and that same shall be confined to disposal of this appeal only. We further direct that this Order

shall remain in force till the final disposal of the Writ Petition before the Writ Court, being WP (C) No.1260/2025, and that the claims of the respective parties shall be governed by the final decision of the Writ Court.

43. Letters Patent Appeal is, thus, **disposed** of, along with the connected CM.

(SHAHZAD AZEEM)
JUDGE

(SINDHU SHARMA)
JUDGE

SRINAGAR

February 20th, 2026

"TAHIR"

i. Whether the Judgment is approved for reporting?

Yes.

