

S. No. 228
Supp. Cause List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP (C) No. 928/2025

CM No. 2444/2025

Abdul Khaliq Shah and Ors.

...Appellant/Petitioner(s)

Through: Saqib Shabir, Adv.

Vs.

UT of J&K and Ors.

...Respondent(s)

Through:

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER

28.04.2025

Learned counsel appearing on behalf of the petitioners has drawn the attention of the court to the writ petition preferred by International Delhi Public School, Bandipora which has been registered as WP (C) No. 2174/2024 in which the following order was passed;

“Notice. Notice in CM as well.

Mr. Syed Musaib, learned Dy. AG, accepts notice on behalf of respondents. He shall report instructions as to whether land is required for any public purpose or not and if required proceed in accordance with law governing the field. He shall also file objections positively within two weeks.

In the meantime, petitioner shall approach Deputy Commissioner, Bandipora, with a representation for installation of gate, who shall consider and decide it by or before next date of hearing”.

Pursuant to the order passed by this court mentioned supra, the concerned Deputy Commissioner, Bandipora has passed a detailed consideration/speaking order in compliance to the order passed by this court dated 19.09.2024 in the aforesaid writ petition preferred by the International Delhi Public School, Bandipora vide Order No. DCB/LS-10 of 2024 dated 25.10.2024. By virtue of the aforesaid order the concerned Deputy Commissioner while rejecting the

case of International Delhi Public School, Bandipora, has observed that the road leading to the school under the title 'construction of the road' from main road to International Delhi Public School, Panzigam and the improvement/up-gradation of road from Gurdal to Panzigam via IDPS with edge wall at Panzigam, was constructed with the sole motive of providing accessibility to the land owners at a cost of Rs. 8.09 lacs and after getting the road completed, the petitioners intended to grab the said road for his personal use. Whereas, the road being constructed/developed by spending public money, has to be used by the general public and it cannot be allowed to be obstructed by anybody by laying claims through misrepresentation of facts.

While parting with the order, the concerned Deputy Commissioner was also of the view that the road being constructed/developed by spending public money and the same cannot be allowed to be obstructed by anybody by laying claims through misrepresentation of facts and accordingly, the representation preferred by International Delhi Public School, Bandipora was rejected being devoid of any merit and the aforesaid order came to be passed in pursuant to the reports submitted by the Tehsildar Bandipora and Assistant Development Commissioner, Bandipora.

By virtue of the aforesaid consideration order, the representation of said school was rejected being devoid of any merit and this aspect of the matter was not brought to the knowledge of the court in the instant petition, however, the petitioner on the other hand by misrepresentation of facts has got yet another order whereby a restraint order has been issued against the respondents not to interfere with the land of the petitioner forming subject matter of the writ petition except in due course of law and by giving a prior notice/information to the petitioner. It is a specific case of the petitioners that had the earlier order mentioned supra, by virtue of which the case of the petitioner stood rejected, brought to the knowledge of the court, then perhaps there would have been no occasion for this court to have passed the aforesaid order.

Under the garb of the aforesaid order dated 11.03.2025, which has been passed in a fresh application filed by the petitioner-International Delhi Public School, Bandipora in CM No. 1264/2025, the said school who is a party respondent in the instant petition as respondent No. 5 has encroached the entire public road thereby causing hindrance with regard to the petitioners land which is not just causing hindrance to the petitioners, but the action of the said

respondent is contrary to the mandate and spirit of the order passed by this court which continues to be operative and the same has been implemented by the concerned Deputy Commissioner by passing a detailed speaking order. The Respondent No. 5 instead of challenging the aforesaid order before the appropriate forum, by way of a camouflage has obtained yet another direction which is contrary to the mandate and spirit of the earlier direction and the same is causing undue hindrance to the petitioners.

Heard learned counsel for the petitioners at length and perused the record.

Issue notice.

Prima facie, case for indulgence is made out. On asking of the Court, Mr. Bikramdeep Singh, learned Dy. AG has caused appearance on behalf of the respondents. He seeks and is granted two weeks time to file response and along with the response, let the action taken report be also filed on behalf of respondent No. 2.

In the meantime, subject to the objection from other side and till next date of hearing before the Bench, the respondent No. 5 is directed to maintain status quo with regard to the installation of the gate on the road in question and in case if the said road has been encroached by the said respondent, the Deputy Commissioner, Bandipora is directed to take appropriate action strictly under law after giving an opportunity of being heard to the said respondent and also to the petitioners herein and while taking action, the Deputy Commissioner shall give due weightage to the order which has already been passed in pursuant to the interim direction passed by this court in WP (C) No. 2174/2024 dated 19.09.2024 by virtue of which the detailed speaking order has been passed and the case of respondent No. 5 got rejected. Let the concerned Deputy Commissioner submit action taken report on or before the next date of hearing.

In the meantime, petitioner to take steps for the service of respondent No. 5. Registry to issue notice to respondent No. 5 returnable within a period of four weeks.

List on 30th May, 2025.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR
28.04.2025
Sakeena