

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

Reserved On: 3rd of May, 2024
Pronounced On: 20th of May, 2024.

LPA No. 72/2023 in WP (C) No. 07/2021

1. Farooq Ahmad Sheikh, Age: 60 Years
S/O Ghulam Hassan Sheikh

2. Shaheen Farooq, Age: 55 Years
W/O Farooq Ahmad Sheikh

Both Residents of Koolipora,
Khanyar, Srinagar.

... Appellant(s)

Through: -

Mr Areeb Javed Kawoosa, Advocate.

V/S

1. Tariq Ahmad Malik, Age: 40 Years
S/O Mohammad Ismail Malik

2. Mohammad Shafi Malik, Age: 45 Years
S/O Abdul Ahmad Malik

3. Sara Shafi, Age: 55 Years
W/O Mohammad Shafi

4. Mubeena Bano, Age: 35 Years
D/O Ghulam Mohammad Lone

5. Ulfat Rafiq, Age: 30 Years
W/O Mohammad Rafiq

Respondent Nos. 1 to 5 Residents of Panzinara, Srinagar.

6. Mohammad Ashraf Wani, Age: 33 Years

7. Gayas-ud-Din Wani, Age: 25 Years

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8. Ghulam Hassan Wani, Age: 20 Years

9. Maqsood Ahmad Wani, Age: 35 Years

Respondent Nos. 6 to 9 Sons of Mohammad Yousuf Wani

10. Mohammad Hafiz Lone, Age: 60 Years
S/O Abdul Qadir Lone

11. Ghulam Mohammad Ganai, Age: 70 Years
S/O Abdul Samad Ganai

Respondent Nos. 6 to 11 Residents of
Ranbir Garh, Pratap Garh, Tehsil Srinagar.

... Contesting Respondents

12. Union Territory of Jammu & Kashmir through
Commissioner/ Secretary to Government,
Revenue Department,
Civil Secretariat, Srinagar/ Jammu.

13. Divisional Commissioner,
Kashmir, Srinagar.

14. Deputy Commissioner, Srinagar.

15. Deputy Commissioner, Budgam.

16. Assistant Commissioner (R), Srinagar.

17. Assistant Commissioner (R), Budgam.

18. Tehsildar Central, Shalteng, Srinagar.

19. Tehsildar Central, Narbal, Srinagar.

20. Naib Tehsildar, Shalteng, Srinagar.

21. Naib Tehsildar, Narbal, Srinagar.

... Proforma Respondent(s)

Through: -

Mr M. A. Qayoom, Advocate for R-1 to 11; and
Mr Mohsin-ul-Showkat Qadri, Sr. AAG for R-12 to 21.

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CORAM:

Hon'ble Mr Justice Tashi Rabstan, Judge
Hon'ble Mr Justice M. A. Chowdhary, Judge

(JUDGMENT)

Chowdhary-J:

01. This *intra* Court appeal is directed against the Order dated 4th of April, 2023 (for short 'the impugned Order') passed by the learned Single Judge in the Writ Petition filed by Respondent Nos. 1 to 11 herein, being WP (C) No. 07/2021, whereby the application (CM No. 7557/2022) filed by the Applicants/ Appellants herein for seeking their impleadment as party Respondents in the Writ Petition stands dismissed.

02. From the perusal of the pleadings on record, it emerges that the Writ Petitioners/ contesting Respondents herein filed Writ Petition invoking Writ jurisdiction of this Court seeking a direction upon the official Respondents to refrain and forbear from causing any kind of interference with the process of filling of the land measuring 32 Kanals and 05 Marlas covered by Survey Nos. 1846/95 Min (03 Kanals and 13 ½ Marlas), 1847/95 (01 Kanal and 10 Marlas), 1837/93 (03 Kanals and 16 Marlas), 1838/93 (06 Kanals and 10 Marlas), 1830/93 (02 Kanals), 1849/96 Min (03 Kanals and 10 Marlas), 1842/94 (02 Kanals and 01 Marlas), 1840/94 Min (03 Marlas), 1846/95 Min (01 Kanal and 17 Marlas), 1840/94 Min (02 Kanals and 18 ½ Marlas), 1829/93 (09 Marlas), 1830/93 (01 Kanal and 11 Marlas) and 1839/94 Min (02 Kanal and 06 Marlas) situate at village Suzeth, Goripora, Tehsil Narbal, District Budgam, recorded as 'Nambal' in the revenue records and land measuring 99 Kanals and 12 Marlas covered under Survey Nos. 1519 Min (02 Kanals and 08 Marlas), 1519 Min (04 Kanals), 1519 Min (04 Kanals), 1519 Min (02 Kanals and 10 Marlas), 1519 Min (01 Kanal), 1518 Min (01 Kanal), 1518 Min (17 ½ Marlas), 1518 Min (02 Kanals), 1518 Min (03 Kanals), 1518 Min (03 Kanals and 4 ½ Marlas), 1500 Min (04 Kanals), 1463/1 (02 Kanals and 01 Marla), 1462 Min (08

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Kanals and 12 Marlas), 1517 Min (02 Kanals and 07 Marlas), 1516 Min (12 Marlas), 1518 Min (01 Kanal and 2 ½ Marlas), 1509 Min (04 Kanals), 1509 Min (04 Kanals and 13 ½ Marlas), 1520 Min (05 Kanals and 08 Marlas), 1520 Min (03 Kanals and 19 Marlas), 1508 Min (04 Kanals and 04 Marlas), 1508 Min (02 Kanals and 16 Marlas), 1508 Min (04 Kanals), 1508 Min (04 Kanals), 1514 Min (05 Kanals and 08 Marlas), 1525 Min (11 Kanals and 11 Marlas) and 1506 Min (07 Kanals) situate at Village Ranbirgarh, Srinagar recorded as '**Maidani**' situate at Sozeth, Goripora, Tehsils Narbal and Ranbirgarh, Srinagar, which is recorded as '*Nambal*' and '*Maidani*' in the revenue records, so as to enable them to make the said land cultivable or develop the same into an Orchard or use it for any industrial or commercial activity and earn a better living, guaranteed to them by Articles 14, 19 and 21 of the Constitution.

03. In the Writ Petition, it was contended that the Writ Petitioner Nos. 1 to 6/ Respondent Nos. 1 to 6 herein are owners in possession of land measuring 32 Kanals and 05 Marlas covered under different Survey numbers situate at Village Suzeth Goripora, Tehsil Narbal, District Budgam, recorded as '*Nambal*' in the revenue records, whileas, the Writ Petitioner Nos. 7 to 11/ Respondent Nos. 7 to 11 herein were claimed to be owners in possession of land measuring 99 Kanals and 12 Marlas covered under different Survey numbers situate at Village Rambirgarh, Srinagar, recorded as '*Maidani*' in the revenue records.

04. The Applicants/ Appellants herein, in their application seeking impleadment as party Respondents in the Writ Petition, claimed that their interests are involved in the Writ Petition being the owners of land comprising of Khasra Nos. 1503, 1506, 1514 and 1520 falling adjacent to the land of the Petitioners. It was further pleaded that the land which forms the subject matter of the Writ Petition is '*Abi Awal*' and that no construction is permissible on such land. The Appellants had also contended that two Marlas of their land under Khasra No. 1521 has been encroached upon by

the Writ Petitioners. Besides, the Applicants/ Appellants herein also questioned the construction raised by the Writ Petitioners over the said 'Abi Awal' land under Khasra No. 1521 situate at Mouzai Ranbirgarh.

05. The Writ Petitioners contested the aforesaid application moved by the Appellants herein on the ground that the Appellants have falsely stated that they have purchased 02 Marlas of land under Survey No. 1521 situate at Mouza Ranbirgarh from two persons and that no particulars of the said persons have been given by the Appellants. It was also averred that the Survey No. 1521 is not the subject matter of the Writ Petition, as such, even the plea of Appellants being owners of 02 Marlas of land is of no consequence. It was further urged that the Applicants were neither necessary nor proper parties to the Writ Petition, inasmuch as, the Writ Petitioners are not claiming any relief against them.

06. The learned Writ Court, after hearing the Counsel for the parties on the application moved by the Applicants/ Appellants herein for seeking their impleadment in the Writ Petition, in terms of the Order impugned, observed that the story projected by the Appellants to create their interest in Survey No. 1521 is full of doubts, inasmuch as, the document "Agreement to Sell", placed on record by the Applicants/ Appellants herein, reveals that two Marlas of land have been purchased by them from one Farooq Ahmad Rather S/O Mohammad Maqbool Rather R/O Ranbirgarh, Tehsil and District Srinagar, whileas, in their application, the Applicants/ Appellants herein have stated that these two Marlas of land have been purchased by them from two different individuals. On the basis of these observations, the learned Writ Court dismissed the application of the Applicants/ Appellants herein for seeking their impleadment in the Writ Petition as party Respondents.

07. The Appellants have assailed the impugned Order passed by the learned Writ Court on the grounds, *inter alia*, that the learned Writ

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Court has, while issuing the Order impugned, failed to appreciate the fact that the Appellants are necessary and proper parties in the Writ Petition as the land of the Appellants is located adjacent to the site where the land of the Writ Petitioners is situated and where they have constructed one storeyed building and are further continuing with other illegal constructions without any building permission. It has been further pleaded that the learned Writ Court has also overlooked the aspect of the matter raised by the Applicants/ Appellants herein that they are directly and substantially affected by the unauthorized construction which is being carried out by the Writ Petitioners on the land which has been purchased by the Appellants and also the land located adjacent to the land of the Appellants. It has also been averred that the learned Writ Court has also virtually dismissed the Civil Suit filed by the Appellants on the subject, which is pending disposal before the Court of learned 3rd Additional District Judge, Srinagar, wherein the Appellants have prayed that the Writ Petitioners be restrained from raising illegal construction and developing a colony without obtaining permission from the competent authority.

08. We have heard the learned Counsel for the parties, perused the pleadings on record and have considered the matter.

09. At the very outset, it shall be advantageous to have a glance at the relief sought for by the Writ Petitioners/ Respondent Nos. 1 to 11 herein in the Writ Petition filed by them, which reads thus:

“By issuance of a Writ of Mandamus or any other Writ, order or direction, the respondents and their field staff be directed to refrain and forbear from causing any kind of interference with the filling of the land measuring 131 Kanals and 17 Marlas, situate at Sozeth, Goripora, Tehsil Narbal and Ranbirgarh, Srinagar, more specifically delineated in Paras (1) and (b) of this petition, which is recorded as “Nambal” and “Maidani” in the revenue records, so as to enable the petitioners to make the said land cultivable or develop the same into an Orchard or use it for any industrial or commercial

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activity and earn a better living, guaranteed to them by Articles 14, 19 and 21 of the Constitution of India.”

10. The Applicants/ Appellants herein had sought their impleadment in the aforesaid Writ Petition, primarily, on the ground that the Writ Petitioners/ Respondent Nos. 1 to 11 herein were raising illegal construction not only on the land which is adjacent to the land of the Applicants, but also on the land belonging to the Applicants, which is adversely affecting the rights and interests of the Applicants. It was also stated that the Writ Petitioners and Applicants have been litigating before various forums upon the same subject matter, but still the Writ Petitioners/ Respondent Nos. 1 to 11 herein filed the Writ Petition without arraying the Applicants as party therein. It was further urged that the rights and interests of the Applicants are directly involved in the subject matter of the Writ Petition, inasmuch as, it was upon the complaints/ representations filed by the Applicants that the statutory authorities, including the Srinagar Municipal Corporation, have started to perform their statutory duties, as such, the Applicants were a necessary and proper party in the aforesaid Writ proceedings filed by the Writ Petitioners/ Respondent Nos. 1 to 11 herein.

11. The only question which falls for consideration of this Court is as to who is the necessary or proper party for being impleaded as party in a Writ Petition. There are certain special statutes which postulate as to who can be joined as parties in the proceedings instituted under the said statutes, otherwise, the provisions of the Code of Civil Procedure should be applicable. So far as the addition of parties under the Code of Civil Procedure is concerned, we find that such power of addition of parties emanates from Order 1 Rule 10 of the Code of Civil Procedure, which reads as under:

“10. (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court

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may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether a plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) to (5) (omitted since not necessary)”

12. From a bare perusal of Sub-Rule (2) of Order 1 Rule 10 of the Code of Civil Procedure, we find that the power has been conferred on the Court to strike out the name of any party improperly joined whether as plaintiff or defendant and also when the name of any person ought to have been joined as plaintiff or defendant or in a case where a person whose presence before the Court may be necessary in order to enable the Court to adjudicate upon and settle all the questions involved in the Suit effectually and completely. A bare reading of this provision, namely, second part of Order 1, i.e., Rule 10 Sub-Rule 2 of CPC would clearly show as to who could be a necessary party in a Suit and the tests that are required to be applied in such a situation are – (1) there must be a right to some relief against such party in respect of the controversy involved in the proceedings; (2) no effective decree can be passed in the absence of such party.

13. Since, the matter involved in this appeal is with regard to an application seeking impleadment as party Respondents in a Writ Petition, therefore, it is to be seen as to whether the principles provided for impleadment of parties in the Code of Civil Procedure can be made applicable to the Writ proceedings. There being no separate statutory

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provision with regard to this subject on Writ Petitions, as such, the baseline to be accepted is that of the provisions of the Code of Civil Procedure are to be kept in mind, however, the concept of necessary party in a purely Civil Suit and a Writ Petition cannot be one and the same, as scope of necessary party in a Writ Petition is much wider than in the Civil Suit and persons to be vitally affected by the Order to be passed by the Writ Court are necessary parties.

14. The Writ Court cannot keep itself confined merely to the litigants appearing before it or on the record available nor will it keep itself confined only to the *lis* before it, but will also take into account the consequences or the effect which the decision will have or is likely to have on the interests of others who may not be wholly necessary for decision of the issue at hand, but whose interests would be vitally affected in consequence of the decision rendered in the Writ Petition. Viewed from this angle, the concept of necessary party in a purely Civil Suit and a Writ Petition cannot be one and the same. Far from this, the scope of necessary party in the Writ Petition will be much wider than in the Civil Suits. The High Court, invoking Writ jurisdiction, looks beyond the parties appearing before it and must ensure that not only the persons, who are essential for the purpose of the disposal of the case, but also those, who will be vitally affected by the order to be passed, are made parties so that nothing is decided behind their back.

15. The Hon'ble Apex Court, in a case titled '**Prabodh Verma & Ors. v. State of Uttar Pradesh & Ors.**', reported as '**AIR 1985 SC 167**', has held as under:

“28. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court

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ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary party."

16. Keeping in view the above-mentioned broad principles governing the concept of necessary party in a Petition under Article 226, this Court is required to consider the aspect of the matter as to whether a person or a party is or is not a necessary party to a proceeding is not always a mere question of law, rather it can really be a mixed question of facts and law. While considering this aspect of the matter, it is of paramount importance to note that in dealing with the subject matter of the Writ Petition relating to improving/ developing their land by the Petitioners, the Writ Court was not concerned with the title of the Applicants/ Appellants, but the rights and interests, if any of the Applicants/ Appellants. Unlike in a Civil Suit, for being a proper or a necessary party, where the applicant has to show a fair semblance of title or interest, the applicant, in a Writ Petition, has to satisfy the Court as to whether the applicant will be vitally affected by the decision to be taken in the Writ Petition.

17. Having regard to the aforesaid principles *qua* impleadment of a party in a Writ Petition, as is the subject matter of this appeal before us, and reverting to the facts of the case arising out of the Writ Petition filed by the Writ Petitioners, it is noticed that the Writ Petitioners had filed the Petition seeking a Writ, Order or direction against the official Respondents to restrain and forebear them from causing any kind of interference with the filling of the land measuring 32 Kanals and 05 Marlas covered by Survey Nos. 1846/95 Min (03 Kanals and 13 ½ Marlas), 1847/95 (01 Kanal and 10 Marlas), 1837/93 (03 Kanals and 16 Marlas), 1838/93 (06 Kanals and 10 Marlas), 1830/93 (02 Kanals), 1849/96 Min (03 Kanals and 10 Marlas), 1842/94 (02 Kanals and 01 Marlas), 1840/94 Min (03 Marlas), 1846/95 Min

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(01 Kanal and 17 Marlas), 1840/94 Min (02 Kanals and 18 ½ Marlas), 1829/93 (09 Marlas), 1830/93 (01 Kanal and 11 Marlas) and 1839/94 Min (02 Kanal and 06 Marlas) situate at village Suzeth, Goripora, Tehsil Narbal, District Budgam, recorded as '**Nambal**' in the revenue records and land measuring 99 Kanals and 12 Marlas covered under Survey Nos. 1519 Min (02 Kanals and 08 Marlas), 1519 Min (04 Kanals), 1519 Min (04 Kanals), 1519 Min (02 Kanals and 10 Marlas), 1519 Min (01 Kanal), 1518 Min (01 Kanal), 1518 Min (17 ½ Marlas), 1518 Min (02 Kanals), 1518 Min (03 Kanals), 1518 Min (03 Kanals and 4 ½ Marlas), 1500 Min (04 Kanals), 1463/1 (02 Kanals and 01 Marla), 1462 Min (08 Kanals and 12 Marlas), 1517 Min (02 Kanals and 07 Marlas), 1516 Min (12 Marlas), 1518 Min (01 Kanal and 2 ½ Marlas), 1509 Min (04 Kanals), 1509 Min (04 Kanals and 13 ½ Marlas), 1520 Min (05 Kanals and 08 Marlas), 1520 Min (03 Kanals and 19 Marlas), 1508 Min (04 Kanals and 04 Marlas), 1508 Min (02 Kanals and 16 Marlas), 1508 Min (04 Kanals), 1508 Min (04 Kanals), 1514 Min (05 Kanals and 08 Marlas), 1525 Min (11 Kanals and 11 Marlas) and 1506 Min (07 Kanals) situate at Village Ranbirgarh, Srinagar recorded as '**Maidani**', so as to enable the Writ Petitioners to make the said land cultivable or develop the same into an orchard or use it for industrial or commercial activity for purpose of earning a proper living guaranteed to them under the Constitution of India.

18. The Applicants/ Appellants, while moving an application for their impleadment as Respondents in the Writ Petition, had pleaded that the Writ Petitioners were raising construction unauthorizedly not only on the land which is adjacent to their land, but also on the land belonging to the Applicants, which is adversely affecting their rights and interests. It had also been pleaded that the Applicants and the Writ Petitioners have been litigating before various *fora* upon the same subject matter. The Applicants' case is that the official Respondents had moved to perform their statutory duties on the complaints/ representations filed by the Applicants only, as

such, they are necessary parties to be arrayed as Respondents in the Writ Petition.

19. The learned Writ Court, vide the Order impugned, observed that the only ground on which the Applicants are seeking their impleadment in the Writ Petition was the alleged encroachment of two Marlas of land stated to be belonging to the Applicants under Survey No. 1521, which they claim to have been purchased from two individuals, however, their particulars are not detailed out in the application and that the story projected by the Applicants to create their interest in Survey No. 1521 was found to be full of doubts, inasmuch as, the document “agreement to sell” placed on record by the Applicants reveals that they had purchased two Marlas of land from one Farooq Ahmad Rather, while as, in their application they have stated that the two Marlas of the land have been purchased by them from two different individuals, as such, the Writ Court came to the conclusion that the Applicants had not come to the Court with clean hands. The learned Writ Court, accordingly, while relying upon the Judgment passed by the Hon’ble Supreme Court that the Plaintiffs are the *dominus litis*, as such, nobody can be permitted to be impleaded as Defendants against the wish of the Plaintiffs, rejected the application filed by the Applicants/ Appellants herein.

20. We, however, are of the considered opinion that in the Writ Petition filed by the Writ Petitioners, there was no question of proving the title of the land by the Applicants/ Appellants, as is required in a Civil Suit and that the only aspect of the matter in a Writ Petition which was to be seen as to whether the Applicants/ Appellants were to be affected by the decision sought to be taken in the Writ Petition. The Applicants have pleaded that the land for which the Writ Petition has been filed seeking to restrain the official Respondents from causing any interference in the process of land filling by the Petitioners for making the same cultivable or to be developed for industrial or commercial use cannot be allowed, as

such, for want of land use change. The Applicants have also pleaded that the said land subject matter of the Writ Petition being adjacent to their land, as such, the use of their land will get affected and the access to their plot through the path shall be adversely affected, thereby making it difficult to make use of their plot as per their choice.

21. The contention of the learned Counsel for the contesting Respondents, which has been accepted by the learned Writ Court, that in view of there being no relief sought against the Applicants/ Appellants and they having no interest or title in the property with regard to which the Writ Petition has been filed by the contesting Respondents could be tenable had they sought to be impleaded in a civil Suit, however, for the purpose of impleadment in a Writ Petition, the yardstick is different, i.e., being vitally affected out of the reliefs sought in the Petition by the persons seeking to be impleaded as party. This contention, therefore, is untenable and was not required to be considered, for rejection of the application seeking impleadment of the Applicants/ Appellants in the Writ Petition.

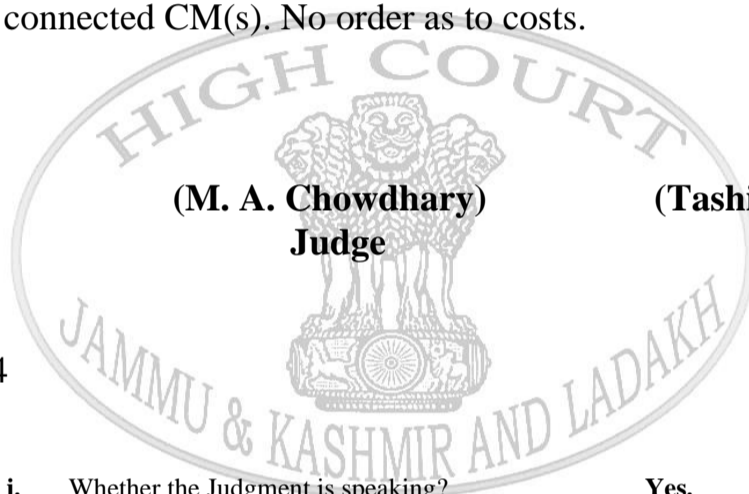
22. The Applicants, on being impleaded as Respondents, should have been heard on these points by the Writ Court as, through the impugned Order, it has resulted into prejudice to the Applicants for denying them the right of being heard in the Writ Petition when they had claimed that their property comprised of Survey No. 1521 shall be vitally affected in case the relief sought for in the Writ Petition is granted without any objection from them. It was, thus, in the interests of justice that the Applicants should have been allowed to be impleaded as party Respondents in the Writ Petition, so that the matter could be heard effectually and completely.

23. Having regard to the afore-stated legal position and the factual background of the case, we find merit in this appeal. Accordingly, the instant appeal is **allowed** on the following terms:

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- i. The impugned Order dated 4th of April, 2023 passed by the learned Writ Court is set aside; and
- ii. The application moved by the Applicants/ Appellants herein before the Writ Court, being CM No. 7557/2022, is **allowed** and they are ordered to be impleaded as party Respondent Nos. 11 and 12 in the Writ Petition filed by the Writ Petitioners, being WP (C) No. 07/2021.

24. Letters Patent Appeal is, thus, **disposed** of on the above terms, along with the connected CM(s). No order as to costs.



SRINAGAR
May 20th, 2024
"TAHIR"

- i. Whether the Judgment is speaking? **Yes.**
- ii. Whether the Judgment is reporting? **Yes.**