

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

LPAOW No. 83/2017

Reserved on : 05.03.2026
Pronounced on: 12.03.2026
Uploaded on : 12.03.2026

**Sh. Mohd Umar Nizami,
S/o Late Sh. Haji Shamas-ud-Din,
R/o Village Maitra, Tehsil & District Ramban.**

.....Appellant(s)

Through :- Mr. R K S Thakur, Advocate with
Ms. Anandita Thakur, Advocate

v/s

**1. Collector Land Acquisition
(Assistant Commissioner Revenue), Ramban.**

.....Respondent(s)

**2. Abdul Qayoom Nizami,
S/o Late Sh. Haji Shamas-ud-Din,
R/o Village Mehar, Tehsil & District Ramban.**

Through :- Mr. P N Raina, Sr. Advocate with
Mr. J A Hamal, Advocate
Ms. Nazia Fazal, Assisting counsel to
Mrs. Monika Kohli, Sr. AAG

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

JUDGMENT

[Sanjeev Kumar J]

1. This appeal, under Clause 12 of the Letters Patent of this Court, is directed against the order dated 18.08.2017 passed by the learned Single Judge of this Court in OWP No. 1061/2012 titled "*Abdul Qayoom Nizami Vs. Collector Land Acquisition (ACR), Ramban & Anr.*", whereby the learned Single Judge has allowed the petition filed by Respondent No. 2 herein under Section 104 of the Constitution of Jammu & Kashmir and set aside the order passed by the learned District Judge, Ramban [**"the Reference Court"**] on 24.05.2012 in a reference pending before it under Section 18 and 31 of the Jammu & Kashmir Land Acquisition Act, 1990 [**"the Act"**].

2. Mr. P N Raina, learned Senior counsel appearing for Respondent No. 2 has taken a preliminary objection to the maintainability of the Letters Patent Appeal against the judgment impugned on the ground that an appeal under Clause 12 of the Letters Patent is not maintainable against an order passed by the learned Single Judge in the exercise of powers of superintendence vested in the Court under Section 104 of the Constitution of Jammu & Kashmir.
3. Before we advert to the preliminary objection raised by Mr. Raina, a brief narration of facts leading to the filing of this appeal would be necessary:
4. The appellant and the Respondent No. 2 are real brothers and have a dispute with regard to land measuring 32 Kanals comprising in Khasra Nos. 727, 728, 731, 747 and 729 in Village Maitra Govindpora, Tehsil Ramban [**“the subject land”**]. The subject land has been acquired by the State Government for public purpose. In view of the dispute having arisen between the parties with regard to the apportionment of the compensation, a reference has been made by the Collector Land Acquisition, Ramban/the Respondent No. 1 herein to learned District Judge, Ramban. During the pendency of reference, the appellant herein moved an application seeking release of the amount deposited by the Respondent No. 1 in the Reference Court as 80% of the compensation for the acquisition of subject land. On the application moved by the appellant, the Reference Court released the sum of ₹ 38,10,640/- in his favour vide order dated 04.05.2012 as an amount purportedly falling in the share of the appellant as per the award.

5. Feeling aggrieved, the Respondent No. 2 filed a petition under Section 104 of the Constitution of Jammu & Kashmir which was registered as OWP No. 1061/2012. The petition was contested by the appellant, however, the learned Single Judge vide order impugned dated 18.08.2017 allowed the petition and set aside the order dated 24.05.2012 passed by the Reference Court and directed the appellant to deposit in the Reference Court, the amount released in his favour, within a period of two weeks. It is this order which is called in question before us in an appeal filed under Clause 12 of the Letters Patent.

6. **Having heard learned counsel for the parties and perused the material available on record, we deem it appropriate to extract Clause 12 of the Letters Patent hereinbelow:**

“12..... And we do further ordain that an appeal shall lie to the said High Court of judicature from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence) of one judge of the said High court or one judge of any Division Court and that notwithstanding anything herein before provided an appeal shall lie to the said High Court from a judgment of “one Judge of the said High Court or one judge of” any Division Court, a consistently with the provisions of the civil procedure code, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court where the judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments

of the judges of the said High Court or of such division court shall be to us, our Heirs or Successors and be heard by our Board of Judicial Advisers for report to us.”

From perusal of Clause 12 of the Letters Patent, it is crystal clear that an appeal from the judgment of learned Single Judge passed in the exercise of power of superintendence is not maintainable.

7. It is not disputed before us that this Court was vested with the power of superintendence under Section 104 of the Constitution of Jammu & Kashmir which is in *pari materia* with Article 227 of the Constitution of India. That being the trite law, it cannot be gainsaid that if the order impugned passed by the learned Single Judge is taken to be an order passed by the learned Single Judge in exercise of the power of superintendence vested in it under Section 104 of the Constitution of Jammu & Kashmir, further appeal before the Division Bench under Clause 12 of the Letters Patent would be barred. However, a question has been raised by Mr. R K S Thakur, learned counsel appearing for the appellant, who would submit, that the order impugned is though purported to have been passed by the learned Single Judge under Section 104 of the Constitution of Jammu & Kashmir, yet, from its contents and substance, it is clearly discernible that the order is one passed by the learned Single Judge under Section 103 of the Constitution of Jammu & Kashmir/Article 226 of the Constitution of India.
8. When confronted with the judgment of Hon'ble Supreme Court rendered in the case of “*Radhey Sham Vs. Chhabi Nath*”, [“(2015) 5 SCC 423”], wherein the exercise of writ jurisdiction under Article

226 against the judicial orders passed by the Civil Courts has been held barred, Mr. R K S Thakur, learned counsel appearing for the appellant would argue that the District Court hearing reference under the Act does not pass any judicial orders as a Civil Court and, therefore, such orders of the District Court/reference Court are amenable to challenge under Article 226 of the Constitution of India.

9. **Having given our thoughtful consideration to the rival arguments, we have arrived at a considered opinion that Reference Court under the Act acts as a Civil Court and its orders are judicial orders.** The Co-ordinate Bench of this Court in the case of “*Custodian Evacuee Property Vs. Amar Nath & Ors.*” [“1981 KLJ 371”] has categorically held that the District Judge hearing a reference under Section 18 or under Section 31 of the Act is a Court and not a *persona designata*. The observations of the Co-ordinate Bench in the aforementioned case in Para 9 and 10 are relevant and are, therefore, set out below:

“9..... Decree as defined in Section 2 (2) Civil Procedure Code means formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy between them in a suit. The word "suit" has not been defined in the Code, though it is generally understood to mean a civil proceeding that commence with the filing of a plaint. A Land Acquisition Court in a reference u/s 31, there can be no manner of doubt, conclusively decides important questions of the apportionment of, or title to the compensation settled by the Land Acquisition Officer, in so far as the said court is concerned. The District Judge, or any other officer appointed in this behalf, acts as a court and not as a *persona designata*. In case a restricted

meaning were to be given to the word "suit", then the party adversely affected by the court's decision on a reference made to it u/s 31 would be inevitably deprived of a very valuable right of appeal, which would be there in case the same decision, in similar circumstances, and on the same material, were to be given by the same court in a reference u/s 18. This would naturally mean hardship to the aggrieved party for no specious reason. Surely, this could not have been the intention of the legislation. Such an intention can hardly survive the attack of Article 14 of the Constitution. An extended meaning has, therefore, to be given to the word "suit" with a view to carrying out the object of the Act. We are in respectful agreement with the connotation given to the word "suit" by Sir Barens Peacock in *Hurro Chunder Roy Chowdhury v. Sooradhones Debia*, 9 W.R. 402:

"The word Suit" does not necessarily mean an action nor do the words "cause of action" and "defendant" necessarily mean cause upon which an action has been brought, in the ordinary restricted sense of the words. Any proceedings in a court of Justice to enforce à demand is a suit; the person who applies to the court is a suitor for relief; the person who defends himself against the enforcement of the relief sought is defendant, and the claim, if recoverable, is a cause of action."

10..... A similar view has been taken in *A. Mahalinga Kudumban and others v. Thectharrppa Mudalier*, AIR 1929 Madras 223, *Chikkanna Chettia Vs. V.S Perumal Chettiar and another*, AIR 1940 Madras 474 (FB), *Loomchand Sait vs. The Revenue Divisional Officer Trichy and others*, AIR 1975 Madras 177 and *Rishiraj Singh and others v. Raghubar Singh and others*, AIR 1968 Madhya Pradesh 1228. We are, therefore, clearly of the opinion that a finding recorded by a Land Acquisition Court on the question of apportionment of compensation settled by the Collector, or on the question of title of the parties to receive it, is a decree against which on appeal would lie by force of Section 95 Civil Pr. Code.”

From the aforesaid judgment and also having regard to the nature of adjudication that is required to be made by the District Court acting as a Reference Court under the Act, there is no manner of doubt that the District Court acts as a Civil Court and its orders are the judicial orders. The disputes which are adjudicated by the Reference Court *inter alia* include the disputes of title, quantum of compensation and apportionment thereof and such adjudication can only be done by putting the rival parties to evidence and deciding the issues or questions on the basis of such evidence.

10. Viewed from any angle, the jurisdiction of the District Judge hearing reference is completely adjudicatory in nature, in which the rights of the parties are determined, like any other Civil Court. Once we concede that the District Judge acting as a Reference Court under the Act acts as a Court and not a *persona designata*, the orders passed by it cannot be said to be anything other than the judicial orders. The judgment of Radhey Shyam (supra) would clearly be attracted.
11. Viewed thus, we find that invocation of Section 104 of the Constitution of Jammu & Kashmir which is in *pari materia* with Article 227 of the Constitution of India was rightly invoked by the Respondent No. 2 and the power of superintendence vested in this Court under the aforesaid provision was rightly exercised by the learned Single Judge. Once, it is established that the impugned order has been passed by the learned Single Judge in the exercise of power of superintendence vested in it under Section 104 of the Constitution of Jammu & Kashmir, it is an inescapable conclusion

that the said order would not be amenable to challenge under Clause 12 of the Letters Patent.

12. **For the foregoing reasons**, the preliminary objection taken by learned Senior counsel appearing for Respondent No. 2 succeeds and, thus, **the instant appeal** under Clause 12 of the Letters Patent is found not maintainable and, *accordingly, dismissed.*

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
12.03.2026
Manan

