

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 50/2026 in
WP(C) no. 601/2025

Reserved on: 13.05.2026
Pronounced on: 05.06.2026
Uploaded on: 05.06.2026

Whether the operative part of
Judgment is Pronounced? **Full**

Atiqa Begum and Ors.

.... Appellant(s)

Through: Mr. Anupam Raina Sr Adv with
Mr. Aswad Attar, Advocate

V/s

UT of J & K and Others

..... Respondent(s)

Through: Mr. Hakim Aman Ali, Dy. AG for R-1 to R-4
Mr. Jahangir Iqbal Ganai, Sr. Advocate with
Mr. Kamil Nazir, Advocate and Ms Syed Gousia, Adv. for R-5

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR-JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR-JUDGE

J U D G E M E N T

(Per Sanjay Parihar-J)

- 1.** The present Letters Patent Appeals (LPA) assail the Judgment and Order dated 30.03.2026 passed by Writ Court in WP(C) No. 601/2025 connected with WP(C) No. 56/2025, whereby the writ petitions preferred by the appellants came to be dismissed. The impugned judgment, it is submitted, suffers from serious errors apparent on the face of the record, both on facts and in law, warranting interference by us in exercise of our appellate jurisdiction.

2. Before proceeding further, it is necessary to briefly advert to the factual matrix of the case. The appellants and respondent No. 5 are successors-in-interest to the estate of one Abdul Ahad Ganie, who owned land measuring 40 Kanals and 17 Marlas under Survey Nos. 45, 60, 62, 63, 214, 298, 300, 390 and 518 situated at Mouza Delina Baramullah-Kashmir. Upon his demise, the estate devolved upon his legal heirs, namely respondent No. 5 (daughter), his widow Mst. Fazi Begum (since deceased), and Mst. Mala Begum, the predecessor-in-interest of the present appellants.

3. The mother of the appellants had already been married, whereas respondent No. 5 was unmarried at the time of the death of the last estate holder. After the death of their mother, Mutation No. 1066 dated 21.11.2011 BK came to be attested in favour of respondent No. 5 on the ground that she was a *Khanani sheen* daughter, allegedly in accordance with the entry recorded in the month of Poh, 2011 Bik rami (corresponding to 1954 A.D.) and mutation was also purportedly based upon a Will stated to have been executed in her favour by the deceased Abdul Ahad Ganie.

4. The mother of the appellants never questioned the aforesaid mutation during her lifetime. However, on 25.11.2024, the appellants challenged Mutation No. 1066 by filing an appeal, alleging that the same was contrary to law, inasmuch as the attesting authority had sanctioned the mutation in violation of the statutory provisions governing succession. It was further alleged that fraud had been perpetrated, as upon the demise of the original estate

holder, the property ought to have devolved upon all the three successors. According to the appellants, since the deceased was not survived by any male issue, only one-half share could have devolved upon respondent No. 5, whereas the remaining share was liable to revert to the collateral heirs of the deceased. Contrary thereto, the entire estate came to be mutated in favour of respondent No. 5, which, according to the appellants, is illegal and unsustainable in law. On the one hand, respondent No. 5 claims herself to be the *Khananeshin* daughter of the deceased, while on the other hand, she seeks to rely upon an alleged Will, which admittedly has never been registered.

- 5.** The appeal preferred by the appellants came to be dismissed by the Collector/Additional Deputy Commissioner, Baramulla, vide order dated 20.05.2025, whereafter the said order was challenged by the respondents through a revision petition. Apart from filing the appeal before the competent authority at Baramulla, the appellants had also sought a declaration before civil court to the effect that the property left behind by the deceased estate-holder was joint, undivided and had never been partitioned between the appellants and respondent No. 5. Furthermore, a decree of prohibitory injunction was also sought, restraining the revenue authorities from disbursing compensation in respect of land falling under Survey No. 92/233, approximately 06 Kanals that had been acquired by the official respondents, out of the total land measuring 40 Kanals and 17 Marlas.

6. During the pendency of the suit, the appellants filed an application before the Civil Court at Baramulla stating that land measuring 3.222 kanals under Survey No. 92 and 2.688 kanals under Survey No. 233(approx. 6 kanals) had come under the National Highway Bypass and stood acquired by the official respondents. Consequently, the suit, to the extent of the acquired land, was sought to be withdrawn on the ground that the Civil Court lacked jurisdiction in respect thereof, which in law constituted sufficient cause for such withdrawal. In the meantime, the appellants also approached the official respondents for release of compensation in their favour, contending that the mere existence of revenue entries in favour of respondent No. 5 would not defeat the joint ownership rights of the parties over the land in question.

7. The Collector, Land Acquisition, upon conducting an enquiry into the aforesaid application, obtained a report from the field staff wherein it was recorded that neither the appellants nor their mother was reflected as owners or tenants of the acquired land in the revenue records, whereas respondent No. 5 was recorded as “Khananeshin daughter.” Accordingly, the Collector rejected the appellants’ application seeking withholding of compensation. However, the appellants also filed an application under Sections 65 and 76 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, seeking reference of the matter to District Judge, Baramulla.

8. In terms of the National Highways Act, 1956, the appellants also sought a direction for making a reference to the competent Civil Court under Section 3H of the Act. However, the Collector, vide order dated 11.03.2025, dismissed the reference application as well, holding that the appellants were neither recorded in the revenue records as owners nor as tenants of the land in question and that no devolution of ancestral property had taken place in their favour. On the aforesaid grounds, the application was rejected. Aggrieved of the order dated 11.03.2025 passed by the Collector, Land Acquisition, the appellants challenged the same by way of the aforesaid two writ petitions, as two separate parcels of land had been acquired. In that factual background the matter has reached before us.

9. It is the specific case of the appellants that the Writ Court has proceeded on a fundamentally erroneous and legally unsustainable premise by treating the mutation entries standing in favour of respondent no. 5 as conclusive proof of title over the acquired land. In doing so, the Writ Court has overlooked and disregarded the settled and consistent position of law that mutation entries in revenue records neither create nor extinguish title and are maintained merely for fiscal purposes. The impugned judgment, therefore, elevates a revenue entry to the status of substantive title, contrary to the well-established principles governing adjudication of proprietary rights. Furthermore, the Writ Court has failed to correctly appreciate the scope and mandate of Sections 3G(1) and 3H of the National Highways Act, 1956 (hereinafter referred to as

“the Act”). Inasmuch as the statutory scheme unequivocally obligates the competent authority to refrain from disbursing compensation where rival claims or disputes regarding entitlement exist, and to refer such dispute for adjudication before the Principal Civil Court of original jurisdiction. The failure to acknowledge and enforce this mandatory statutory safeguard has resulted in grave miscarriage of justice.

10. The appellants further submit that the Writ Court has thereby acted in derogation of deeply entrenched legal and constitutional principles governing protection of property rights, fair adjudication, and statutory compliance. The findings returned by the Writ Court not only undermine the binding legal position concerning the evidentiary value of mutation entries but also dilute the procedural safeguards incorporated under the Act to ensure fair determination of competing claims over compensation arising out of compulsory acquisition. The impugned judgment, if allowed to stand, would result in irreversible prejudice to the appellants by permitting disbursement of compensation in favour of respondent no. 5 despite the subsistence of a bona fide title dispute. It is, therefore, prayed that the present appeals be allowed, the impugned judgment be set aside, and the respondents be directed to withhold release and disbursement of compensation amount pertaining to the acquired land in favour of respondent no. 5 to the extent it relates to the share and entitlement claimed by the appellants, pending adjudication of the dispute before the competent civil forum.

11. Per contra, the respondents, while opposing the appeals, argued that the appellants have failed to raise any bona fide and substantial dispute regarding succession, title, or entitlement to compensation in respect of the acquired land left behind by late Abdul Ahad Ganie. It was further contended that, having withdrawn their claim in the civil suit insofar as the acquired land is concerned, the appellants are precluded from asserting any claim over the compensation assessed. According to the respondents, the Collector has rightly refused to make a reference, as the appellants do not fall within the ambit of “persons interested” under the Act. Therefore, it was urged that the order passed by the writ court does not warrant any interference.

12. We have heard both counsels and also examined the record of writ court.

13. The following issues arise for determination in the present appeals:

- i. Whether the Competent Authority/Collector was under a statutory obligation, in view of Sections 3G and 3H of the National Highways Act, 1956, to withhold disbursement of compensation and make a reference to the Principal Civil Court upon the existence of rival claims regarding entitlement to compensation?
- ii. Whether the rejection of the appellants’ application for reference under Section 3H of the National Highways Act, 1956, vide order dated 11.03.2025, solely on the ground that the appellants were not reflected in the revenue records as owners or tenants, is legally sustainable?

14. The judgment of Hon’ble Supreme Court in *Raja Harish Chandra Raj Singh's case 1962 SCR (1) 676* while dwelling into the provisions the Land Acquisition Act, makes it abundantly clear that the award to be passed by the LAO is a tender or an offer

made by the Collector on behalf of the Government to the owner of the property for his acceptance. In deciding the amount of compensation payable the collector holds an enquiry and the said enquiry is confined to the valuation of the property, i.e. to ascertain the market value of the property before an offer could be made to the owner of the land. The said valuation is made by the LAO as an agent of the Government and not as a judicial officer. It is an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired. If that is the correct legal possession it cannot be said that while making an administrative decision the Collector could decide the dispute regarding title to the property and that he has the power to decide the complicated question of title. In fact the enquiry referred to in Section 11 is confined only to enquiry into the objections which any person interested has stated pursuant to a notice given under Section 9 to the measurements made under Section 8 and into the value of the land at the date of publication of the notification under Section 4 Sub-section (1) and into the respective interests of the persons claiming the compensation. In other words in the enquiry what the Land Acquisition Officer is expected to enquire into is the true area of the land for which he has to pay compensation and bearing in mind Sections 23 and 24 of the Act, the value of the land acquired and further if there are more than one claimant claiming compensation incidentally he has to go into the question of their respective interests in the land for apportionment of the compensation payable.

15. In *Shyamali Das vs Illa Chowdhry & Ors* AIR 2007 SCC 215 the Hon'ble Supreme Court had an occasion to consider the question as to who would fall within the ambit of the term "person interested". There it was held as under:-

“In *Sharda Devi v. State of Bihar and Another* (2003) 3 SCC 128, it was opined that a State who claims ownership of the land in question was not a party interested stating:

"If it was a government land there was no question of initiating the proceedings for acquisition at all. The Government would not acquire the land, which already vests in it. A dispute as to pre-existing right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the Civil Court for determination either under Section 18 or Section 30 of the Act. The reference made by the Collector to the Court was wholly without jurisdiction and the Civil Court ought to have refused to entertain the reference and ought to have rejected the same. All the proceedings under Section 30 of the Act beginning from the reference and adjudicating thereon by the Civil Court suffer from lack of inherent jurisdiction and are therefore a nullity liable to be declared so."

In “*Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. v. Allahabad Vikas Pradhikaran and Another* [(2003) 5 SCC 561]”, this Court opined:

"It is well established that the reference court gets jurisdiction only if the matter is referred to it under Section 18 or 30 of the Act by the Land Acquisition Officer and that civil court has got the jurisdiction and authority only to decide the objections referred to it. The reference court cannot widen the scope of its jurisdiction or decide matters which are not referred to it"

We may also notice that prima facie the appellant cannot be said to have any right title and interest in the property but we do not intend to express our final opinion thereupon as the matter is pending consideration before the Civil Court.

A disputant is entitled to an interim order, provided he is a party thereto. If for one reason or the other, he cannot be impleaded as a party to the proceeding, the Court would have no jurisdiction to pass any interim order in his favour.

If the impleadment application was not maintainable, it was, required to be dismissed in limine. It could not have been entertained only for pressing an interim order. Law does not contemplate exercise of such a jurisdiction by a court of law. Any such order passed is coram non iudice.

We, therefore, do not find any merit in this appeal. However, before parting with this matter, we may only observe that

although contention of Mr. Ghosh is that the civil suit was not maintainable in view of a decision of this Court in *Laxmi Chand & Ors. v. Gram Panchayat, Kararia & Ors.* [JT 1995 (8) SC 195], it is not necessary for us to express any opinion thereupon. We may furthermore place on record that a contention has been raised by Mr. Ghosh that the suit has been dismissed. We in this matter are not concerned with the correctness or otherwise of the said statement.

16. In *Sharda Devi vs State of Bihar AIR 2003 SUPREME COURT 942*, it was held as under:-

“Award made by the Collector is final and conclusive as between the Collector and the 'persons interested', whether they have appeared before the Collector or not, on two issues : (i) as to true area, i.e. measurement of land acquired, (ii) as to value of the land, i.e. the amount of compensation, and (iii) as to the apportionment of the compensation among the 'persons interested' again, between the Collector and the 'persons interested' and not as amongst the 'persons interested' inter se. In the event of a reference having been sought for u/s 18, the Collector's award on these issues; if varied by Civil Court, shall stand superseded to that extent. The scheme of the Act does not attach a similar finality to the award of the Collector on the issue as to the person to whom compensation is payable; in spite of the award by Collector and even on failure to seek reference, such issue has been left available to be adjudicated upon by any competent forum.

In *Nusserwanjee Pestonjee Vs. Meer Mynodeen Khan Wullud Meer Sudroodeen Khan Bahadoor*, their Lordships of the Privy Council have held that wherever jurisdiction is given by a Statute and such jurisdiction is only given upon certain specified terms contained therein it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if they are not complied with the jurisdiction does not arise. The Privy Council decision above-said was followed and the statement of law made therein approved by this Court in *Kothamasu Kanagaratnam and Ors. Vs. State of Andhra Pradesh and Ors.* AIR 1965 SC 304. This Court held that under the Land Acquisition Act the matter goes to the Court only upon a reference made by the Collector and there is no doubt that the jurisdiction of the Court arises solely on the basis of a reference made to it. The Court can adjudicate upon the matter referred to it but the Court is certainly not invested with the jurisdiction to consider a matter not directly connected with it and this is not a matter of mere technicality. A case of lack of inherent jurisdiction will not be cured by mere failure to object to the proceedings before the Court on the ground of an absence of reference on matters not referred. There can be no waiver or acquiescence. Indeed, when there is an absence of inherent jurisdiction, the defect cannot be waived nor can be cured by acquiescence, to sum up the State is not a 'person interested' as defined in Section 3(2) of the Act. It is not a party to the proceedings before the Collector in the

sense, which the expression 'parties to the litigation' carries. The Collector holds the proceedings and makes an award as a representative of the State Government. Land or an interest in land pre-owned by State cannot be subject matter of acquisition by State the question of deciding the ownership of State or holding of any interest by the State Government in proceedings before the Collector cannot arise in proceedings before the Collector (as defined in Section 3(c) of the Act). If it was a government land there was no question of initiating the proceedings for acquisition at all. The Government would not acquire the land, which already vests in it. A dispute as to pre-existing right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the Civil Court for determination either under Section 18 or Section 30 of the Act. The reference made by the Collector to the Court was wholly without jurisdiction and the Civil Court ought to have refused to entertain the reference and ought to have rejected the same. All the proceedings under Section 30 of the Act beginning from the reference and adjudication thereon by the Civil Court suffer from lack of inherent jurisdiction and are therefore a nullity liable to be declared so.

However, we would like to clarify our decision by sounding two notes of caution. Firstly, the quashing of the proceedings under Section 30 of the Land Acquisition Act would not debar the State from pursuing such other legal remedy before such other forum as may be available to the State Government and on the merits and the maintainability thereof, we express no opinion herein. Secondly, the situation in law would have been entirely different if the title of the appellant would have come to an end by any event happening or change taking place after the making of the award by the Collector as was the case in *Dr. G.H. Grant Vs. State of Bihar* (1965) 3 SCR576. The title of Dr. Ghosh had come to an end by change of law referable to a date subsequent to the making of the award. In this context it was held "there is no reason why the right to claim a reference of a dispute about the person entitled to compensation may not be exercised by the person on whom the title has devolved since the date of the award" and "there is nothing in Section 30 which excludes a reference to the Court of a dispute raised by a person on whom the title of the owner of land has, since the award, devolved".

- 17.** From the above stated legal position, it's apparent that under land acquisition proceedings the collector, while conducting an enquiry, is only required to ascertain the respective interests of the persons claiming compensation for the purpose of apportionment. Such an enquiry does not extend to adjudication of disputed title or determination of ownership of the acquired property. The statutory

scheme contemplates that where the claimants mutually agree regarding apportionment, the award merely records such agreement and becomes conclusive inter se the parties. However, where disputes arise amongst the claimants regarding entitlement or apportionment, the Land Acquisition Officer may apportion the compensation amongst persons believed to be interested, but he is not vested with jurisdiction to decide questions of title. The enquiry presupposes the existence of some interest in the acquired property and is confined only to determining the extent of such interest for apportionment purposes.

- 18.** Further, once a claimant dissatisfied with the award seeks a reference within the prescribed period, the Collector has no discretion but to refer the matter to the competent Civil Court for adjudication. Upon such request, the Land Acquisition Officer ceases to have jurisdiction to disburse compensation and is legally bound to refrain from making payment until the dispute is determined by the Court. The statutory framework also recognises situations where a person having an interest in the acquired property may not have participated in the acquisition proceedings or may acquire title subsequent to the award. In such cases, the claimant may assert entitlement before the Collector, who may refer the dispute to the Civil Court. Where there exists any dispute regarding entitlement to compensation or its apportionment law mandates the collector to deposit the compensation before the Court, thereby clearly indicating that the Land Acquisition Officer has no authority to adjudicate title disputes and his jurisdiction

remains confined only to apportionment amongst persons claiming interest in the compensation.

19. Having heard learned counsel for the parties and upon perusal of the record, we are of the considered view that the appellants were admittedly not parties to the acquisition proceedings. The material on record reveals that respondent No. 5 alone was reflected as owner in possession in the revenue records on the strength of a mutation existing in her favour and, consequently, she alone was heard during the acquisition proceedings. It is well settled that entries in the revenue record are fiscal in nature and do not conclusively determine title; nevertheless, the Collector conducting acquisition proceedings is bound to proceed on the basis of the official records available at the relevant point of time for the purpose of assessment and disbursement of compensation. Admittedly, the appellants were never recorded in the revenue record either as owners or as persons in possession of the acquired land. Had the appellants possessed any recognized interest in the property, there would have been no occasion for them to challenge the mutation in favour of respondent No. 5 or institute a civil suit seeking declaration of co-sharer ship with respect to the acquired land as well as the remaining estate of the deceased title holder. In such circumstances, the Collector rightly treated respondent No. 5 as the sole “person interested” for the purposes of acquisition proceedings and apportionment of compensation. Prima facie, therefore, the appellants failed to establish any subsisting right, title, or interest in the acquired property. However, since the

appellants have already sought adjudication of their alleged rights before the competent civil court, any compensation released in favour of respondent No. 5 shall necessarily remain subject to the outcome of such proceedings.

20. During the course of arguments, learned counsel appearing for respondent No. 5 fairly conceded that in the event the appellants succeed before the civil court in establishing their rights, they would at best be entitled to one-half share of the compensation amount pertaining to the acquired land. This Court finds merit in the stand taken by the Collector in declining to make a reference under Section 3H of the National Highways Act, 1956. The appellants neither participated in the acquisition proceedings nor established any legally recognized interest in the acquired property at the relevant time. Though the appellants challenged the mutation entries standing in favour of respondent No. 5, they failed to obtain any relief from the competent appellate authority. Section 3H of the National Highways Act is substantially analogous to Section 30 of the Land Acquisition Act, and the scope of reference thereunder is confined to disputes relating to apportionment amongst persons already recognized as interested persons. The Collector had no jurisdiction to adjudicate disputed questions of title or to determine pre-existing proprietary rights. Even if such a reference had been made, the same would have been beyond the competence of the Collector. We say so because of the fact that the predecessor-in-interest of the appellants, who happened to be the real sister of respondent No. 5, never challenged the mutation entries during her

lifetime, thereby lending further support to the prima facie entitlement of respondent No. 5.

21. We therefore are of the firm view that the Collector was under no legal obligation to withhold disbursement of compensation merely because a civil dispute had been raised by the appellants. The pendency of civil proceedings could not compel the Collector to invoke Sections 3G or 3H of the National Highways Act in the absence of any recognized claim on the part of the appellants. The mutation in favour of respondent No. 5 had remained operative since the year 1954 and spot verification also disclosed possession only in her favour. Accordingly, while assessing compensation, the Collector was justified in considering objections solely from persons reflected in the revenue records as owners or tenants. It has also come on record that after learning about the assessment of compensation, the appellants attempted to withdraw their claim relating to the acquired land from the pending civil suit. However, no order permitting such withdrawal has been placed on record before us. Consequently, the civil suit concerning the entire property, including the acquired land, continues to remain sub judice, and it shall be for the appellants to establish their entitlement before the competent civil court.

22. The reliance placed by the appellants upon the judgment rendered in *Mohan Devi's* case is misconceived, the factual matrix therein being clearly distinguishable from the present case. On the contrary, the principles laid down in *Shyamali Das* and *ShardaDevi* “supra” squarely apply and clearly establish that the

reference court cannot enlarge the scope of its jurisdiction to determine disputed questions of title. In view of the aforesaid discussion, we find no illegality, perversity, or jurisdictional error in the judgment passed by the Id. Writ Court warranting interference in appellate jurisdiction. Consequently, the appeal fails and is accordingly *dismissed*. However, since the civil suit instituted by the appellants is still pending adjudication, respondent No. 5 shall be entitled to receive the compensation amount as assessed and determined by the Collector subject to furnishing a bank guarantee equivalent to one-half of the compensation amount before the competent civil court as security, pending final disposal of the suit.

23. Ordered accordingly.

(SANJAY PARIHAR) (SANJEEV KUMAR)
JUDGE JUDGE

SRINAGAR

05.06.2026

“Imtiyaz”

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No