

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

CJ Court

Case: LPA No. 50/2025

Said Akbar Khan, Age 80 years
S/O Mohd. Khan
R/O Village Ari, Tehsil Mendhar,
District Poonch

.....Appellant(s)

Through :- Mr. Sachin Gupta, Advocate
Ms. Arsha Sharma, Advocate.

v/s

1. Union Territory of Jammu & Kashmir through
Commissioner/Secretary Revenue Department,
Civil Secretariat, Jammu.

2. District Magistrate, Poonch.

3. Sub Divisional Magistrate, Mendhar, District Poonch.

4. Rakhmat Jan,
W/O Late Sh. Tuffail Hussain
R/O Village Ari
Tehsil Mendhar, District Poonch.

5. Imran Khan
S/O Tuffail Hussain
R/O Village Ari
Tehsil Mendhar, District Poonch.

.....Respondent(s)

Through :- Mrs. Monika Kohli, Sr. AAG for R-1 to 3.
Mr. Irfaan Khan, Advocate for R-4 & 5.

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE**

**ORDER
18.03.2025**

01. The appellant – Said Akbar Khan, through the medium of this Letters Patent Appeal (LPA), has challenged the order dated 04.03.2025 (*hereinafter called, “the impugned order”*) passed by the learned Single Judge of this Court in CRM(M) No. 729/2023 titled – “*Said Akbar Khan Vs Union Territory of J&K & Ors.*” asserting therein that in view of the

dispute between the appellant and the respondents No. 3 and 4 with regard to the land, claiming inheritance of the land of one Dost Mohd. measuring 7 kanal 18 marlas falling under khasra No. 874 of Village Ari Tehsil Mendhar, the Tehsildar as Executive Magistrate, Mendhar had attached the property invoking section 145 Cr.P.C and the order passed by the learned Magistrate had been upheld by the jurisdictional Sessions Court at Poonch, in the Revision Petition filed by the private respondents; that the parties have also been litigating with regard to the revenue entries before the revenue authorities; that the learned Single Judge, vide impugned order, had allowed the private respondents to make necessary repair/reconstruction of their collapsed/damaged residential house with the rider that they shall not exceed the length and breadth of the damaged house as already directed by the concerned Sub-Divisional Magistrate, whose order was subject matter of the petition, before the Court.

02. Learned counsel for the petitioner has, vehemently, argued that the final relief has been granted vide impugned interim order by the learned Single Judge in favour of the private respondents for repair/reconstruction of their house, which is the subject matter of the present appeal and prayed that the order impugned be set-aside or in the alternate *status-quo* be ordered with regard to the property in question.
03. Mr. Irfaan Khan, Advocate, who is present in the Court, appears on behalf of the private respondents has, vehemently, opposed the plea raised on behalf of the appellant asserting that the Letters Patent Appeal

(LPA) on hand is not maintainable having been filed against an order passed by the learned Single Judge regarding a criminal matter and that the remedy available to the appellant was not filing this *Intra Court Appeal* before this Court, since the matter arises out of a petition filed under section 482 Cr.P.C.

- 04.** The petition in which the impugned order has been passed has its genesis in an order passed by the Sub-Divisional Magistrate, Mendhar on 14.07.2023 granting permission to repair/reconstruct their collapsed/damaged residential house at the same place of damaged house without exceeding its length and breadth, on an application moved by the respondent No. 4 – Rakhmat Jan.
- 05.** Tehsildar as Executive Magistrate, Mendhar vide order dated 03.11.2007 had attached the land measuring 7 kanal 5 marlas except ‘*Gair Mumkin Kotha*’ measuring 5 marlas and pathway situated at Village Ari, Tehsil Mendhar & District Poonch and kept on ‘*spurdnama*’ which was ratified by the Sub-Divisional Magistrate, Mendhar, in view of the apprehension of breach of peace on spot. The order passed by the Tehsildar came to be assailed before the jurisdictional Sessions Court at Poonch, which vide order dated 15.10.2012, *dismissed* the revision petition and upheld the order dated 03.11.2007 passed by the Executive Magistrate, Mendhar and challenged before that court.
- 06.** Thereafter, it appears that the respondent No. 4 – Rakhmat Jan moved an application to the Sub-Divisional Magistrate, Mendhar to permit her to effect repairs/reconstruction of the house which was in a dilapidated

condition and the Sub-Divisional Magistrate, Mendhar granted permission, vide order dated 14.07.2023.

- 07.** The appellant herein having been aggrieved, filed an appeal against an order dated 14.07.2023 passed by the Sub-Divisional Magistrate, Mendhar before the District Magistrate, Poonch who, however, *disposed of* the said appeal observing that the initial order passed by the Executive Magistrate under section 145 Cr.P.C had excluded the house for which permission for repair was being sought. It appears that aggrieved of the order passed by the Sub-Divisional Magistrate, Mendhar and District Magistrate, Poonch, the appellant herein filed a petition under section 482 Cr.P.C before this Court which is subjudice before this Court and the learned Single Judge, vide impugned order, had not granted any stay with regard to the permission accorded for the repair/reconstruction of the house to the private respondents herein.
- 08.** The petitioner through the medium of this Appeal, has assailed the order passed by the learned Single Judge, permitting the private respondents herein to go ahead with the repairs/reconstruction of their house, mainly on the ground, that private respondents, who have other residential house as well could not be permitted, in view the dispute with regard to the land, whereon the house in question is situated, particularly, having regard to the fact that the parties have also been litigating, with regard to revenue entries before the revenue authorities and a separate writ petition in that behalf is also subjudice before this Court.

09. The impugned order though not final as has been passed in a petition which is criminal in nature, this Bench has already taken a view with regard to non-maintainability of an *Intra* Court Appeal against the order passed in criminal proceedings vide judgment dated 19.09.2024 passed in **LPA No. 204/2023** titled – “**Khursheed Ahmad Chohan Vs UT of J&K & Ors.**” holding that no such *Intra* Court Appeal is maintainable against an order passed in a petition of criminal nature before the learned Single Judge. A similar view has been taken by a Co-ordinate Benches of this Court in judgment dated 16.08.2021 passed in **LPA No. 80/2020** titled – “**Shamshada Akhter Vs Aijaz Parvaiz Shah**” & **LPA No. 84/2021** titled – “**Parvez Ahmad Fafoo Vs Imtiyaz Ahmad Tak**” and vide judgment dated 02.08.2023 in **LPA No. 265/2022** titled – “**Abdul Qayoom Khan & Anr. Vs State of J&K & Ors.**” holding that no such appeal is maintainable against an order passed in a petition under section 482 of the Criminal Procedure Code (Cr.P.C) or even under Article 226 of the Constitution of India with trappings of a petition under section 482 Cr.P.C.
10. Viewed thus, the present Letters Patent Appeal (LPA) on hand is not maintainable. Apart from this, even on merits since the house for which permission has been accorded for its repair/reconstruction by the private respondents had never been part of the attachment order passed by the local Executive Magistrate and upheld by the Revisional Court, there is no plausible legal reason, so as to suggest that petitioner was entitled to object to the permission accorded for the repair/reconstruction of the house, which on spot verification by the field staff of Revenue

Department was found in dilapidated condition, so as to protect the same.

11. Appeal is, accordingly, *disposed of* alongwith connected application(s).

(M A CHOWDHARY)
JUDGE

(TASHI RABSTAN)
CHIEF JUSTICE

JAMMU
18.03.2025
Bunty

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

