

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

CM(M) No.22/2025
CMNo.266/2025

**UNION OF INDIA THROUGH COMMANDANT 21 BN ITBP
FORCE**

.....Petitioner(s)/Appellant(s)

Through: Ms Masooda Jan, Sr. Advocate
with Ms. Nazima, Advocate

V/s

ABDUL RASHID DAR AND ORS.

... ..Respondent(s)

Through : None

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

Dt: 08.12.2025

1. The petitioner has challenged orders dated 28.02.2024 and 22.10.2022 passed by learned Sub Judge (Judge Small Causes), Srinagar and has also sought a direction upon the respondents to permit it to complete the construction of boundary wall, which is necessary for security of the petitioner. A further direction calling upon respondents No.2 and 3 to initiate acquisition proceedings for acquiring the disputed piece of land has also been sought.
2. Despite service no one has appeared on behalf of the respondents.

3. I have heard learned counsel for the petitioner and perused the record of the case.
4. It appears that respondent No.1 has filed the suit before the Court of learned Sub Judge (Judge Small Causes), Srinagar, (hereinafter referred to be as “the trial Court”), seeking injunction against the defendants including the petitioner herein restraining them from raising any sort of construction on the property comprised in khasra No.11 and 12 situated at Zewan Panta Chowk, Srinagar. In the said suit *ex parte* injunction came to be passed by learned trial Court on 22.10.2022, whereby the petitioner was restrained from raising any sort of construction in the suit property till next date of hearing. It appears that after passing of the aforesaid order, the petitioner moved an application seeking vacation of order dated 22.10.2022 before the trial Court. Vide impugned order dated 28.02.2024, the learned trial Court has decided both the applications, one filed by the plaintiff under Order 39 Rules 1 and 2 of CPC and other filed by the petitioner/defendant seeking vacation of order dated 22.10.2022. Accordingly order dated 22.10.2022 has been made absolute, where as the application filed by the petitioner for vacation of interim order has been dismissed.

5. The impugned order dated 28.02.2024 wherein impugned order dated 22.10.2022 stands merged, has been passed by learned trial Court in exercise of its powers under Order 39 Rules 1 and 2 of CPC. The said order is appealable in nature in terms of Order 43 Rule 1(r) of CPC before the District Judge. It is a settled law that in a case where a litigant has alternative efficacious remedy available to him/her, normally the High Court does not entertain a petition under Article 227 of the Constitution. The petitioner has not shown any compelling circumstance that would persuade this Court to entertain the present petition in spite of availability of alternative remedy of appeal against the impugned order dated 28.02.2024.

6. That takes us to the direction sought by the petitioner upon the respondents for permitting it to raise construction and for acquisition of land. These directions cannot be sought in a petition under Article 227 of the Constitution. So far as permission to raise construction on spot is concerned, the same cannot be allowed till order dated 28.02.2024 passed by learned trial Court is in force. If at all the petitioner desires to raise construction, it has to assail order dated 28.02.2024 by way of appeal before an appropriate forum. The direction

regarding initiation of acquisition proceedings cannot be granted by this Court in these proceedings. If the petitioner is in need of land then it has to approach the official respondents by way of an indent. A writ of mandamus cannot be issued by this Court while exercising its powers under Article 227 of the Constitution.

7. For the fore going reasons, I do not find any merit in this petition. The same is accordingly dismissed, leaving it open to the petitioner to work out the appropriate remedy.



(SANJAY DHAR)
JUDGE

SRINAGAR
08.12.2025
Sarveeda Nissar

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