

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

Reserved On: 5th of February, 2026.
Pronounced On: 19th February, 2026.
Uploaded On: 19th February, 2026.

Whether the operative part or
full judgment is pronounced: **Full.**

LPA No. 21/2023 in WP(C) No. 1082/2020

Mehraj-ud-Din Malik
S/o: Late Abdul Hamid Malik
R/o: Pariswani Tehsil Kwarhama,
District Baramulla.

... Appellant(s)

Through: -
Mr. Gulzar Ahmad Bhat, Advocate.

V/s

1. UT of Jammu and Kashmir through Commissioner cum Secretary to Govt., Revenue Department, Civil Secretariat, Jammu.
2. Deputy Commissioner, Baramulla.
3. Sub Divisional Magistrate, Tangmarg/Gulmarg, Baramulla.
4. Tehsildar Kwarhama, District Baramulla.

... Respondents

Through: -
Mr. Hakeem Aman Ali, Dy. AG.

CORAM:

**HON'BLE MS JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE**

(JUDGMENT)

Shahzad Azeem-J:

01. This intra Court Appeal is directed against the judgment dated November 25, 2022 passed by the learned Writ Court in WP (C) No. 1082/2020, titled '**Mehraj ud Din Malik v. Union Territory of J&K and Others**', whereby while placing reliance upon the amended Section 133 (2)

of the Land Revenue Act, Samvat 1996 [“the Act”], the Writ Court has dismissed the Writ Petition.

02. Although, the appellant has made an attempt to lay foundation of his claim by delineating a lengthy narration of facts, but in this process he has failed to even place on record original application for exchange of land, nor has produced any document as to show that he is owner in possession of 06 Marlas of land in lieu of which he is seeking exchange of land. Nonetheless, on the basis of half-baked claim, the revenue field staff has done some exercise.

03. Confronted with this aspect of the matter, we proceed to cull out the essence of grievance veritable from the available pleadings and documents.

04. It appears that the appellant had applied for exchange of 06 Marlas of (Shamilat Deh) Kahcharaie land falling under Survey No. 292 with his proprietary land measuring 06 Marlas falling under Survey No. 284, situated in the same village namely; Pariswani, Tehsil Kwarhama. The case projected by him is that both parcels of land are adjacent to each other having equivalent value and suitable for grazing purpose.

05. The further case set up by the appellants is that when the respondents did not consider his application for exchange of land, he filed Writ Petition before the Court bearing OWP No. 1576/2020, wherein the Writ Court directed the Deputy Commissioner, Baramulla, to take an appropriate decision strictly in accordance with law. The further contention of the appellant is that his uncle, Sh. Abdul Rahman, has also applied for exchange of land, and it was duly processed and accorded sanction for exchange of Shamilat Deh/ Kahcharaie land measuring 09 Marlas falling under Survey No. 292 Min, situated at Village Pariswani, in lieu of proprietary land measuring 09 Marlas falling under Survey No. 284 Min in the same village, but the same treatment was denied to the appellant.

06. On the other hand, the consistent stand of the respondents is that by the time the case of the appellant for exchange of land came up for consideration by the Collector, Section 133 (2) of the Act had been substituted and the power of the Collector to grant permission for exchange of land had been withdrawn. It is, owing to the statutory amendment, the appellant could not be granted same benefit that was extended to his uncle.

07. The learned Writ Court, after considering the factual matrix and the submissions advanced by the parties, and upon examining the scope and effect of the amendment of Section 133 (2) of the Act, had returned a categorical finding that exchange of proprietary land in lieu of encroached Kahcharaie land is not permissible under the amended provision. It was further held that, in view of amendment, the Deputy Commissioner no longer possesses the statutory competence to sanction such exchange, therefore, in absence of any statutory framework for considering the offer of the appellant, no Writ of Mandamus can be issued to accept the offer of the appellant.

08. The appellant, however, did not assail the findings of the Writ Court qua the interpretation of the amended Section 133 (2) of the Act, to effect that the statutory power of the Deputy Commissioner to sanction exchange of proprietary land with Kahcharaie land stands withdrawn, however, challenge is thrown on the ground that since he had applied for exchange land before October 26, 2020, i.e., the date on which the amendment to Section 133 (2) was carried out, therefore, his case was required to be considered in terms of the pre-amended Section 133 (2) of the Act. Therefore, according to the appellant the Writ Court erred in dismissing his case by applying the amendment in Section 133 (2) of the Act retrospectively.

09. Heard and considered.

10. There is no dispute to the proposition that it was only under the pre-amended Section 133 (2) of the Act that the Collector was competent to

sanction the exchange of (Shamilat Deh) Kahcharaie land, in lieu of proprietary land. Section 133 (2) of the Act was substituted vide S.O. 3808 (E) dated October 26, 2020, whereby the old section 133 (2) providing for exchange of (Shamilat Deh) Kahcharie land with that of proprietary land was completely substituted and competence of Collector to grant permission for exchange of land has been done away with, as such there is no provision on statute book, as on date enabling the grant of permission for exchange of land. Therefore, in our opinion the Writ Court has rightly observed that the post-amendment of Section 133 (2) of the Act, the exchange of proprietary land in lieu of encroached Kahcharaie land is not legally permissible and the Deputy Commissioner concerned lacks competence in this regard.

11. In so far as the ground raised by the appellant that in his case, the amendment could not have applied retrospectively because he had approached the authorities before the amendment was carried out in Section 133 (2) of the Act is concerned, the same also is not legally tenable because until and unless the case of the appellant could have been considered by the competent authority, (Collector) mere on the basis of exchange of some communications between the field staff that too predominantly in respect of case of his uncle, the appellant does not acquire any right to stake a claim for exchange of land under pre-amended Section 133 (2) of the Act. However, perhaps things would have been different, if the competent authority would have considered the case of the appellant under the pre-amended Section but the findings may not have been favourable to him. Therefore, the Writ Court has rightly rejected the contention of the appellant while testing the same on the anvil of the amended Section 133 (2) of the Act.

12. At this stage, one important aspect of the matter needs to be taken note of that appellant has specifically stated that his case was pending before the revenue authorities since 2013 and at that time he was minor, but without placing on record the application by virtue of which he applied for exchange of land, went onto to bank upon order dated March 11, 2020 passed

by the Writ Court in WP (C) No. 733 of 2020 titled Meraj-ud-Din Malik V. UT of J&K and Others, whereby the Deputy Commissioner was directed to take appropriate decision in accordance with the law. It is noteworthy here that in the said order, the Writ Court has specifically mentioned that appellant claims that he has applied before the Deputy Commissioner Baramulla for grant of permission for exchange of land in terms of Section 133(2) of the Act in the year 2017, but till date no decision has been taken. Therefore, there is a palpable contradiction as to the date when appellant has applied for grant of permission for the exchange of land. It was in this backdrop, at the outset, we were constrained to note that the appellant is also labouring under grave confusion with regard to facts.

13. Appellant is on admission that at the time when he had applied for exchange of land he was a minor and thus he moved an application through his uncle. Although, there is no iota of proof so as to show that the appellant has applied for exchange of land through duly appointed guardian or natural guardian nor he has shown to us any revenue record that he is owner in possession of the land in lieu of which he seeks exchange of Kacharia land. All along some inter-se departmental communications relied upon to create an impression that as if the case of the appellant was processed along with his uncle, however, again the revenue extract with the memo of appeal only reflects the name of his uncle in the Cultivation Column, that is perhaps so because given the age of the appellant at the relevant time his name may not have been entered in the revenue records.

14. It is settled principle of law that a minor lacks capacity to contract or transfer an immovable property and any such consent or offer by the minor would be *void abinitio* and he can only act through natural guardian or court appointed guardian but in the case on hand, nothing has been placed on record that he acted through his natural guardian or court appointed guardian.

15. In this view of the matter, even we have serious doubt regarding the maintainability of the claim of the appellant itself coupled with the fact that even on a cursory look to unamended Section 133 (2) of the Act, there is nothing mandatorily enjoined upon the Collector to grant permission for the exchange of land upon receipt of any such request. Therefore, once it is found that the appellant does not stand on the same footing vis-à-vis his uncle, the appellant cannot seek the equal treatment as meted out to his uncle. Treating unequals as equals in competence could enable abuse, so the law deliberately differentiates.

16. It goes without saying that a law declared by the Hon'ble Supreme Court becomes the "law of the land" thus is binding on all under Article 142 of the Constitution of India. Therefore, advantageously reference can be made to the observations made by the Hon'ble Supreme Court in '**Jagpal Singh & Ors. v. State of Punjab and Ors., AIR 2011 Supreme Court 1123**'. This was a case which escalated to the Hon'ble Supreme Court, wherein the common village land, as in the case on hand Kahcharaie land (common village land), was being trespassed/ encroached by muscle power/ money power and in collusion with the officials and even with the Gram Panchayat. The Hon'ble Supreme Court held that such kind of blatant illegality cannot be condoned even if the appellants have built houses on the land in question. They must be ordered to remove their construction and possession of the land in question must be handed back to the Gram Panchayat. Hon'ble Supreme Court further held that regularizing such irregularities must not be permitted because it is the Gram Sabha land which must be kept for the common use of the villagers of the village. While summing up, the Hon'ble Supreme Court has in very categorical terms directed all the State Governments to prepare a scheme for eviction of illegal/ unauthorized occupants of Gram Sabha/ Gram Panchayat/ Poramboke/ Shamilat land and these must be restored to the Gram Sabha/ Gram Panchayat for the common use of villagers of the village.

17. Therefore, in view of authoritative dictum of Hon'ble Supreme Court, even if the houses are built up by the trespassers by encroaching upon the Shamilat land, it has been held to be illegal and prohibited by the Hon'ble Supreme Court way back in the year 2011 and direction was issued to all the State Governments to remove such illegal encroachments. Therefore, we hold that law on the subject was very much in existence, even prior to the Amendment of Section 133 (2) of the Act, but it has been given statutory shape through an Amendment and nothing new has been done, as such, the amended provision of the Section 133 (2) of the Act applies to the case of the appellant on all fours, as such, the appellant has no enforceable right to either illegally encroach upon the Kahcharaie land or to maintain the Writ of Mandamus for its enforcement.

18. Therefore, the present appeal is found to be devoid of merit. Consequently, the same is **dismissed**, along with connected CM. Interim direction(s), if any, shall stand vacated.

(SHAHZAD AZEEM)
JUDGE

(SINDHU SHARMA)
JUDGE

SRINAGAR

19th February, 2026

"Showkat Khan"

i. Whether the Judgment is approved for reporting?

Yes.