

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

WP (C) No. 2826/2025.

*Reserved on: 18.11.2025
Pronounced on: 21.11.2025
Whether operative part or
full judgment is pronounced:
Uploaded on: 21.11.2025.*

*Farooq Ahmad Dar
S/O Ghulam Mohammad Dar.
R/O Dangerpora, Pulwama.*

..... Petitioners

Through: Mr. Nissar Ahmad Bhat, Advocate

Versus

1. Union Territory of J&K th.
Commissioner/Secretary to Govt. Rev. Deptt, Civil Sectt. Sgr./Jammu.
2. District Magistrate (Deputy Commissioner), Pulwama.
3. Tehsildar, Pulwama.
4. Executive Officer, Municipal Council, Pulwama.
5. President, Municipal Council, Pulwama.
6. Rajnath.
7. Ramesh.
8. Munu Ji.
*6 to 8 sons of Durga Devi and Shamboo Nath
Residents of Dangerpora, Pulwama.
At present Jagti, Jammu.*

..... Respondent

*Through: Ms. Maha Majeed, A.C to
Mr. Mohsin. S. Qadri, Sr. AAG (R-1-3)
Mr. Zaffar Qadri, Advocate (R-6-8)*

CORAM: HON'BLE MR. JUSTICE, RAJESH SEKHRI, JUDGE

JUDGMENT
21.11.2025

1. Petitioner has invoked writ jurisdiction of this Court for the quashment of order dated 6th November, 2025, passed by respondent No.2-District Magistrate (Deputy Commissioner), Pulwama, vide which mutation No. 3369 came to be set aside and respondent No. 3-Tehsildar, Pulwama was directed to takeover possession of subject land from the petitioner and hand it over to the private respondents/rightful claimants.
2. Petitioner is aggrieved of the impugned order on various grounds urged in the memo of petition. He has relied upon “**Ghulam Nabi Najar v. State and**

others”, 2009 SLJ; 493, “*Rajiv Verma v. State and others*” 2010 SLJ; 759, and a judgment rendered by this Court on 19.12.2023, in “*Shabir Ahmad Rufai v. UT of J&K & Ors*” (LPA No. 243/2023)

3. *Ex-adversus*, learned counsel for the respondents has questioned maintainability of the present petition on the premise that the petitioner has straightway approached this Court bypassing the statutory remedy of appeal provided under *The Jammu and Kashmir Immoveable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997*, [hereinafter referred to as “*the Act*”]. In fortification he has relied upon a host of pronouncements rendered by this Court from time to time including “*Abdul Majid Chechi v. Govt. of J&K and others*” WP(C)No. 923/2021 dated 28.06.2022, “*Lyceum Public School v. UT of J&K and others*” WP(C) No. 150/2023 dated 29.03.2024, “*Ghulam Rasool Bhat v. State of J&K; OWP No. 1597/2025 dated 04.12.2021*”, “*Manzoor Ahmad Mir v. UT of J&K and Anr*”. [LPA No. 16/2021] dated 17.08.2021 and “*Mohammad Shafi Naiko v. UT of J&K and others*”, WP(C) No. 3475/2023 dated 05.03.2025.
4. Heard and considered.
5. Impugned in the present petition is an order propounded by District Magistrate (Deputy Commissioner), Pulwama, who is an authority competent under the Act to take custody of the immoveable property of the migrants and evict unauthorized occupants. Any person aggrieved of an order passed under the Act of 1997, has a right to prefer an appeal before the Financial Commissioner (Rev) in terms of Section 7 of the Act, which for the ease of reference has been extracted below:-

Section-7. Appeal —(1) Any person aggrieved of an order passed under this Act, may file an appeal before the Financial Commissioner, Revenue:

Provided that no such appeal shall be entertained against—

(a) an interlocutory order ;

(b) an order of eviction unless possession of the property is surrendered to the competent authority ;

(c) an order of payment of compensation determined under this Act unless the amount of compensation is deposited with the appellate authority.

(2) The period of limitation for filing of an appeal under sub-section (1) shall be fifteen days from the date of order appealed against.

6. It is evident from a bare perusal of Section 7 of the Act that no appeal against an order passed under the Act, can be entertained unless possession of the property is surrendered to the competent authority.
7. Mr. Nissar Ahmad, learned counsel for the petitioner has relied upon ***M/s Godrej Sara Lee Ltd. V. Excise and Taxation Officer-cum-Assessing Authority and others” (Civil Appeal no. 5393 of 2010 dated 01.02.2023)***, to contend that availability of an alternative appeal by itself does not oust writ jurisdiction of the High Court. Mr. Nissar, submits that since there is statutory obligation upon the appellant in Clause (b) of sub-Section (1) of Section 7 of the Act to surrender possession of the property, for filing appeal, the remedy provided under the Act cannot be termed efficacious because the petitioner along with his family is putting up in the residential house over the subject land.
8. The rule of alternative remedy and its judicial exposition came to be considered by the Apex Court in ***Radha Krishan Industries v. State of H.P; (2021) 6 SCC***, whereby Hon’ble Supreme Court relying upon its earlier decisions clarified that exceptions to the rule of alternative remedy arises only, (i) where writ petition is filed for the enforcement of fundamental rights; (ii) where there is violation of principles of natural

- justice; (iii) where the order or proceedings are without jurisdiction; or (iv) where the vires of a legislation is challenged.
9. The impugned order, in the present petition has been passed by the District Magistrate, Pulwama, who is admittedly an authority competent under the Act. This order has been passed after affording an opportunity of hearing to both the sides. Therefore, it cannot be said that impugned order is without jurisdiction or violative of the principles of natural justice. Since petitioner has neither sought enforcement of any fundamental right nor challenged the vires of any legislation, the present case is not covered under any of the four exceptions carved out by the Supreme Court in ***Radha Krishan Industries***. As such, when a right of appeal is created under the Act, resort must be had to the statutory remedy, before invoking discretionary writ jurisdiction of the High Court, under Article 226 of the Constitution.
10. The Act, be it noted, came to be legislated to meet an extraordinary situation, which unfolded in the wake of unfortunate en-masse exodus of a minority community from the valley in 1989 and thereafter. The community migrated to different parts of the Country, in a hush, leaving behind their home and hearth. It was precisely for this reason that the Legislature, in its wisdom, incorporated Class (b), regarding surrender of possession of the property, in sub-section (1) of Section 7 of the Act, which cannot be allowed to be breached.
11. True it is that justice has to be administered as per the mandate of law, and when a Statutory Authority is required to do a thing in a particular manner, the same has to be done in that manner or not at all. However, in peculiar facts and circumstances of a case to address an extraordinary situation

presented in a case, the justice at times is required to be tampered with mercy.

12. The case of the petitioner is that he has raised a residential house over the subject land, with the aid and consent of mother of the private respondents, who had alienated 25½ marlas of land covered under Survey No. 2209/1603 situate at Dangerpora, Pulwama in favour of the petitioner by virtue of irrevocable General Power of Attorney, on 3rd January, 2000, followed by an affidavit dated 4th January, 2000. A person in settled possession of property, cannot be evicted except through due process of law. This principle is cornerstone of the property law. “*Settled Possession*”, means possession that is effective, undisturbed and existing for a sufficient period of time to the very knowledge of the owner.

13. Since petitioner claims to have raised a residential house over the subject land, the question which falls for consideration is whether he can be forced to surrender the possession of his residential house and thrown on the road.

14. Placed in a similar predicament and identical fact situation, Division Bench of this Court in ***Shabir Ahmad Rufai***, relying upon a three-Judge Bench judgment of the Orissa High Court in ***Jayagopal Mundra vs. Gulab Chan Agarwalla And; AIR 1974 Ori 173***, allowed the petitioner to avail the statutory remedy of appeal, before the competent authority under the Act, after handing over symbolic possession of the property. It was held that symbolic delivery of possession amounts to actual delivery, however, occupant is not physically removed, but the possession in law, is taken by the competent authority from him.

15. Relevant excerpt of the judgment, captured in para-13, for the facility of reference has been extracted below:-

13. Now the question arises as to how the relief aforesaid can be given to a party when statute does not provide so. In this regard, we are of the view that in view of the peculiar facts and circumstances of the case, the appellant can be given a liberty to file an appeal subject to handing over the symbolic possession of the property in question before the competent authority. It is well settled that symbolic delivery of possession amounts to actual delivery of possession. Reference in this regard may be made to a three-judge Bench judgment in the case of **Jayagopal Mundra vs Gulab Chand Agarwalla And: AIR 1974 Ori**

173. Relevant paragraph of the judgment is reproduced hereunder:

“So far as delivery of possession against the judgment-debtor or any person in occupation on his behalf is concerned, there is no distinction between the two modes of delivery of possession. Law is well settled that as against the judgment-debtor symbolical delivery of possession amounts to actual delivery of possession. In a Full Bench decision of five Judges rendered by the Calcutta High Court in (1880) ILR 5 Cal 584 (FB), (Juggobundhu Mukherjee v. Ram Chunder Bysack) their Lordships observed thus:

"In the one case, the delivery of the land is to be made by placing the plaintiff, in direct possession. In the other, the delivery is effected by the officer of the Court by going through a certain process prescribed by Section 224 (corresponding to Order 21, Rule 36 CPC), and proclaiming to the occupants of the property that the plaintiff has recovered it from the defendant. This is the only way in which the decree of the court, awarding possession to the plaintiff, can be enforced; and as, in contemplation of law, both parties must be considered as being present at the time when delivery is made, we consider that, as against the defendant, the delivery thus given must be deemed equivalent to actual possession"

16. In my opinion, the arrangement devised by the Division Bench in **“Shabir Ahmed Rufai”** shall be in the fitness of justice, and it shall be expedient if the petitioner is allowed to handover the symbolic possession of the subject property before availing the statutory remedy of appeal.

17. Having regard to the aforesaid, the present petition is dismissed with liberty to the petitioner to avail statutory remedy of appeal, provided under the Act, by surrendering symbolic possession of the property in question to the Competent Authority, within a week's time, and Appellate Authority shall, thereafter, proceed to decide the appeal with expedition, preferably within a period of three months, after affording a reasonable opportunity of being heard to both the sides. Petitioner shall file an undertaking before the

Appellate Authority that in case he fails, he shall hand over vacant possession of the property in question to the Competent Authority.

18. Interim direction, if any, shall continue till filing of appeal by the petitioner.

19. Before parting, however, it is made clear that nothing observed in this order shall be construed as an expression of opinion on the merits of the case.

20. **Disposed of** along with connected CM(s).

(Rajesh Sekhri)
Judge

Srinagar

21.11.2025.

“Ab. Rashid-PS”

Whether the order is speaking:

Yes .

Whether approved for reporting:

Yes

