

**(1975) 07 J&K CK 0006**  
**In the Jammu And Kashmir High Court**  
**Case No : Writ Petition No. 274 of 1972**

Abdul Hamid Afridi

APPELLANT

Vs

Secretary to Government General Department and others

RESPONDENT

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**Date of Decision :** 12-07-1975

**Acts Referred:**

Constitution of India, 1950 — Article 19(R)(f), 31(2)

**Citation :** (1975) JKLR 344 : (1975) KashLJ 342

**Hon'ble Judges :** Mian Jalal-Ud-Din, J

**Bench :** Single Bench

**Advocate :** J.L.Sehgal, Amar Chand , Advocates appearing for the Parties

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## Judgement

(1) This petition for the issuance of writ of certiorari is in respect of the order of the Custodian Jammu as also the Custodian General dated

11121971 and 4172 respectively. The petition has been presented in the following circumstances :

(2) A garage attached to house No. 239B. C. at Panjbaktar road Jammu, an evacuee property, was originally allotted to the petitioner in the year

1967 by the Custodian Evacuee Property Jammu following a rent deed executed by the petitioner in favour of the Custodian. The petitioner has

averred that the said garage continued to remain in his occupation as lessee at a monthly rent of Rs. 15/ uptil the end of December 1971.

Respondent No. 1 wanted to dispossess the petitioner from the said garage. He therefore approached the General Department which directed the

then Custodian to ask the petitioner to vacate the garage. But the Custodian being aware of the provisions of Rule 14 of the Jammu and Kashmir

State Evacuee's ( Administration of property ) Rules did not oblige the respondent NJ. 1. He wrote back to respondent No. 1 that the petitioner

could not be asked to vacate the Said garage as he had not violated any such rule (vide Annexure 'A'). Thereafter respondent No. 1. exercising his official position acted in collaboration with respondent No. 3 and sought to eject the petitioner from the said garage. It is further averred that the respondent No. 1 had no authority to eject the petitioner from the garage. He however pressurised respondent No. 5 who without exercising his discretion in the matter proceeded to evict the petitioner on the basis of Government Order No. CD (E) 7016/Allot dated 8101971. The petitioner was asked to vacate the garage by means of a notice dated 11121971 which was served upon the petitioner on 17121971 at 930 A. M. The petitioner preferred revision petition against the order of the Custodian before the Custodian General; who; however, dismissed the same. Hence the present writ.

(3) The petitioner contends that he has been in continuous possession of the garage upto the expiry of the original lease period and also thereafter

as he has been paying rent to the Custodian who has accepted the same in the token of the tenancy. The Custodian Jammu has treated the

petitioner as a tenant and no order for recovery of possession could therefore be passed while the Custodian had accepted the rent upto the end of

December 1971 The order of eviction before the expiry of the time was illegal, unlawful and not sustainable. The amount of rent for December

1971 was deposited in the first week of December, The General Department had no right to pass any order regarding the evacuee property. The

order was therefore without jurisdiction. The petitioner has been evicted from the garage after the order of the Custodian General and its

possession has been delivered to respondent No. 3 in violation of the fundamental rights of the petitioner. The petitioner therefore claims a writ of

certiorari in his favour for quashing the impugned order referred above. Alongwith the petition which is supported by an affidavit the petitioner has

filed various annexures by way of copies of orders and notice issue by the Department.

(4) Shri Mahboob Shah Custodian Evacuee Property has sworn in reply affidavit averring therein that house No. 239BC Panjbaktar road Jammu

and the Garage therein is also one of the houses kept at the disposal of the Government for providing accommodation to the officials of the

Government on the eve of Darbar Move, The Custodian charges rent for each such houses from the Government which in turn recovers the same from the moving officials authorised to use such houses During the Summer when the officer move to Srinagar the houses remain vacant but the Govt. pays the rent for these summer months. It is affirmed that in the year 1967 the Custodian allowed the use of garage by the petitioner only for specific period i. e. from 15/1/1967 to 10th of October 1967 (vide copy of the order annexure RB). The authorisation was purely "on temporary basis" so that on 1st November 1967 it could be reoccupied by the Darbar move officer during the next winter session commencing from 1st of November 1967. To cover up the permission of the Custodian for the temporary use of the garages the petitioner executed a rent deed (annexure RD) for the period from 15/6/67 to 20/10/67. After the expiry of the tenure of the deed on 30/10/67 permission was never renewed in favour of the petitioner nor was the garage leased out to him. Subsequently the Government authorised the use of the house including the garage by the Secretary to Government Law Department (Respondent No. 3) for the winter session of Darbar move 1970/71. The Law Secretary occupied the house and the garage in it from 6/11/1970 onwards. When the Law Secretary moved to Srinagar alongwith the Darbar in the month of May 1971, the petitioner unauthorisedly put his vehicle in the garage On 12/11/1971 when the officer again moved down to Jammu the allotment of the house and the garage was repeated in favour of the respondent No. 3 by the Government. On learning that the garage attached to the house had been illegally occupied by the petitioner, the Custodian vide his letter No. BC239CRS dated 11/12/1971 called upon the petitioner to vacate the garage and hand over the possession thereof to the Law Secretary. On his failure to do so the Custodian initiated eviction proceeding against the petitioner. The petitioner filed revision petition before the Custodian General who dismissed the same and upheld the order of eviction of the Custodian. The possession of the house and the garage attached is now with the respondent No 3 from 5/1/72. The Custodian, it is averred, never consented to or passed any order allowing the petitioner to be in possession of the garage after the expiry of the period of lease beyond 30 October 1967. It was never renewed thereafter. The mere fact that the petitioner unilaterally and clandestinely managed to deposit the rent with

cashier of the Custodian, Office did not have the effect of creating any tenancy in favour of the petitioner. Even so these are mere contractual rights

which could not be enforced by seeking writ. The possession of the petitioner from 11/6/70 onwards was against law and that of a trespasser. As the

possession of the petitioner of the garage was unlawful, he was therefore called upon to vacate and handover the possession thereof to the

respondent No. 3. The said letter was received by the petitioner on 17/12/1971, after he was given of course reasonable notice which he failed to

comply. A warrant of eviction was thereafter issued on 5/1/72 and in compliance thereof the petitioner was evicted from the garage.

(5) Along with the reply affidavit certain letters (forming annexures RA and RH) have been filed.

(6) Shri Ghulam Shah respondent No. 3 has also filed a reply affidavit in which he has averred that he occupied the garage in winter 1970/71 in

pursuance of Government order dated 8/10/1970. He again occupied it the following year for winter 1971/72. At the time when the order dated

12/11/1972 was passed the garage was in unauthorised possession of the petitioner and the custodian evacuee property got the same vacated on

5/1/72. Since then the garage is in his possession and he is using it for parking of his car.

(7) I have heard the learned counsel for the parties.

The first question to be decided in the case is whether on the facts disclosed in the petition a writ can lie in the present case; whether the right of an

evacuee property constitutes 'property' within Art. 31 (2) of the Constitution. In my opinion such an allotment does not confer any proprietary

rights on an allottee. Nor can the tenancy rights of an allottee be termed as 'property' so as to attract Article 31 (2) of the Constitution. In AIR

1957 SC 599 it has been held that the property to fall within the scope of Art. 19(1)(f) must be capable of being the subject matter of "acquisition

and disposal". The interest of a quasipermanent allottee arises by statutory grant and is not capable of acquisition by the ordinary citizen in any of

the normal modes. Their lordships proceeded to observe that for the bundle of rights which constitute quasi permanent tenure it is difficult to see as

to how the protection under Article 31 (2) can be afforded to an allottee. Further in order that Art. 31 (1) may apply, it is not enough that there is

deprivation but that it must also be deprivation without the authority of law. The allottee whose quasi permanent allotment has been cancelled

cannot invoke the protection of Article 31 (1) as it is not an illegal usurpation of jurisdiction by the authority so as to constitute negation of authority

of law.

(8) The fact that under the quasipermanent allotment scheme the allottee is entitled to a right to possession within the limits of the relevant

notification and that such right to possession is itself property, does not affect the question whether it is property so as to attract, the protection of

fundamental rights under the Constitution. In this connection reference may also be made to a Full Bench decision of this court reported in AIR

1973 J & K 89 which is also of the same import. This being so the petitioner cannot invoke Article 31 (1) and 32 (2 A) to his aid and the writ

petition is not therefore maintainable on this ground.

(9) Another question that requires consideration is as to whether the petitioner has been deprived of his rights relating to tenancy in the garage in

violation of the rules on the subject so as to attract any relevant article of the Constitution. From the copy of the lease deed (vide annexure RD) it is

manifest that the period of tenancy was from 1567 upto the end of October 1967. There is nothing to indicate that the tenancy was renewed, after

this period Even assuming for the sake of argument that the petitioner paid rent for garage even thereafter, a letter (Annexure RB) written by

respondent No. 3 to the Custodian on 111270 show that the possession of the garage was vacated by the petitioner and taken by the respondent

No. 3 on 6 1170 in pursuance of government order No, CD (E) 70 6 dated 81070. This shows that the petitioner had vacated the garage in

November 1970. Therefore when the petitioner had vacated the garage in November 1970 he had thereafter ceased to have any interest in the

said garage and his tenancy rights came to an end by surrender of possession or by deprivation of possession. The petitioner should have moved

the court then for seeking his remedy. He did not do it then but allowed respondent No. 3 to remain in possession for the winter season 1970/71

without any protest. It is difficult to see as to how he can agitate the matter now. According to the respondents he again occupied the garage

unauthorisedly without the consent of the Custodian in summer 1971 when

respondent No. 3 proceeded to Srinagar. As the petitioner had no authority from the Custodian to reoccupy it he was asked to vacate it in winter m1971 at the time of Darbar move, and warrant of eviction was therefore issued against him. In view of the position stated above there was no violation of rule 14 of the Rules, Moreover providing accommodation to Government officers is a ground that comes within the ambit of 'public purposes'.

(10) Again the argument that the petitioner deposited rent even after the expiry of the period of lease specified in the rent deed and that it was a case of holding over of tenancy is also devoid of force inasmuch as firstly, it is not established that the Custodian had consciously accepted the rent from the petitioner and that he had otherwise assented to his continuing in possession as a lessee. The mere fact that the petitioner deposited some rent in the office of the Custodian which the office entered in the books in routine matter without reference to the rights and obligations of the parties does not show that the Custodian had given his consent to the petitioner to renew the tenancy. Secondly even if it was so that holding over came to an end on 61170 when the petitioner was deprived of its possession and respondent No. 3 was given the possession of the garage and he remained in occupation there if for winter 197071. Thirdly, as held by the Supreme Court in AIR 1972 S. C. 819 a mere payment of rent does not renew tenancy and after the period of lease the position of a tenant is that of tenant at will. It will be appropriate to reproduce the observations of their Lordships as below :

The act of holding over after the expiration of the term does not create tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. There is a distinction between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will.

(11) Again, the argument that the petitioner had deposited rent upto the end of December 1971 loses all its force as we have it that the petitioner was evicted form the premises on 5172 pursuant to warrant of eviction and not in December 1971. Therefore he could not feel aggrieved on that

score.

(12) For the foregoing reasons the writ fails which is hereby dismissed, but without any order as to costs.