
(2021) 11 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1059 Of 2013, IA No. 1 Of 2013

Abdul Rashid Zargar

APPELLANT

Vs

State Of J&K And Ors

RESPONDENT

Date of Decision : 11-11-2021

Acts Referred:

Jammu And Kashmir Evacuees (Administration Of Property) Rules, Svt. 2008 — Rule 13C

Jammu And Kashmir State Evacuee (Administration Of Property) Act, Samvat 2006 — Section 10A

Citation : (2021) 11 J&K CK 0023

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Z.A.Shah, I. Sofi, G.J. Bala

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. The petitioner is aggrieved and has called in question order No. 217 of 2013 dated 15-02-2013 (impugned order), passed by respondent No.2 to the extent it provides for payment of premium of Rs. 1.28 crore by the petitioner.

2. Grievance of the petitioner is that in terms of the impugned order, he has been directed to pay a sum of Rs. 1.28 crore in 03 installments within 12 months and the lease has been sanctioned only for remaining period of lease of erstwhile lessee - Sh. Farooq Ahmad Rather (lessee for short).

3. with a view to appreciate the grievance of the petitioner and the grounds of challenge urged, it is necessary to notice the material facts leading to the filing of this petition.

4. A big chunk of evacuee land, measuring 24 kanals, falling under several survey numbers, situated at Suthoo, Kuthar Bagh, Tehsil Chadoora of District Badgam, was leased out by the Evacuee Department in favour of lessee for a

period of 40 years for industrial purposes. The lease agreement was accordingly executed on 13-03-1998, laying down the terms and conditions of the lease. The lessee aforesaid was also allowed by the Custodian, Kashmir, to raise construction on the said land. On the ground that the lessee had violated terms and conditions of the lease and had illegally felled down trees and raised multi storeyed building unauthorizedly, the lease was cancelled. The lessee, it is alleged, had also failed to pay the rent. The cancellation order was assailed by the lessee before the J&K Special Tribunal at Srinagar ["the Tribunal") by way of a Revision Petition, which was dismissed by the Tribunal and the cancellation order passed by the Custodian, Kashmir, was upheld. Feeling aggrieved by the order of the Tribunal, the lessee challenged the same before this Court in OWP 655/2006, which was disposed of by this Court vide order and judgement dated 19-05-2010. The order passed by the Tribunal in Revision Petition was set aside and as a result, the cancellation order passed by the Custodian, Kashmir, was quashed. The Custodian, Evacuee Property, Kashmir, was directed to issue formal notice to the lessee in respect of alleged violations committed by him and provide him a reasonable opportunity to submit his objections and then proceed in the matter in accordance with the rules.

5. It appears that the Custodian, Kashmir, reconsidered the matter in the light of the directions passed by this Court and submitted the case to the respondent No.2 for fixation of premium u/s 10-A of the J&K State Evacuee (Administration of Property) Act Samvat 2006 ("Act of 2006" for short). The lessee showed his reluctance to pay the premium on the ground that the lease in his favour was granted prior to issuance of SRO 149 of 1985 dated 15-04-1985 and, therefore, he was not liable to pay the premium.

While this was going on, the lessee submitted an affidavit to the Department stating therein that he intended to transfer the leased land in favour of the petitioner herein and had also given him full authority for dealing with the Department of Evacuee Property on all matters connected with the leased land. It, thus, clearly transpires that with a view to avoid paying the premium demanded by the respondents, the lessee sold the leased property to the petitioner and executed certain documents, authorizing the petitioner to apply, process and get appropriate orders from the competent authority.

On the request of the lessee, made through the petitioner, the case for transfer of lease from the lessee to the petitioner was processed in the office of respondent No.2. The premium payable was negotiated through Custodian, Kashmir. Having regard to the circumstances, vis-à-vis the unbecoming conduct of the lessee, the Custodian General, Kashmir, transferred the leasehold rights in respect of the subject land in favour of the petitioner subject to various terms and conditions which, inter alia, include condition No.1, which reads thus :

" I. That the lessee shall pay premium of Rs. 1.28 lacs (Rupees one crore and twenty eight lacs) out of which lessee has deposited Rs. 20.00 lacs in advance. The balance amount of premium shall be paid by the lessee in three installments

in 12 months and rent in accordance with order No. 27 of 2011 dated 18-07-2011 read with addendum dated 28-07-2011 which shall be revisable under rule 13-A/13-B of E.P.Act."

This was done by the respondent No.2 in terms of the order impugned.

6. It is not in dispute that the order impugned was acted upon by both the parties. The petitioner retained the possession of the subject land, which had been transferred to him by the lessee and which transfer of land was later on regularized by the respondent No.2 vide order impugned.

Indisputably, the petitioner has been using the property ever since.

7. The petitioner has accepted the impugned order and has taken all the benefits arising out of it but does not wish to pay the premium, which is one of terms of transfer of lease in his favour. It is, however, projected by him that he may not be averse to pay the premium amount provided the lease is transferred to him for a period of 40 years as had been done in the case of lessee. The petitioner further submits that the payment of premium of Rs. 1.28 crore for the land, leased out for only 12 years, is too exorbitant and per se arbitrary besides being contrary to the Act and Rules framed there under.

8. Having heard learned counsel for the parties and perused the record, I find no illegality or infirmity in the impugned order dated 15.02.2013. As a matter of fact, neither the Act of 2006, nor the rules framed thereunder clearly stipulate transfer of lease hold rights from the one lessee to another. The impugned order, in essence, is a grant of lease of the subject land to the petitioner subject to payment of Rs.1.28 lacs as premium. The lease would be further subject to terms and conditions as were contained in the lease executed by the respondent-Department with the erstwhile lessee, namely Farooq Ahmed Rather. It is apparent from a bare reading of the impugned order that the transfer of lease from the erstwhile lessee to the petitioner herein was conditional in nature and subject to terms and conditions laid down in the impugned order. Amongst other terms and conditions, it was clearly stipulated that the lessee i.e. the petitioner herein shall pay a premium of Rs.1.28 lacs. It is in pursuance of this order, the petitioner became competent to legitimately hold the subject land which land is under his use and occupation since the year 2013. The petitioner cannot accept the beneficial terms and conditions of the lease and avoid those which are unpalatable or may not be profitable to him. The impugned order, which is apparently passed in the interest of the petitioner, has to be accepted by him in its entirety. He cannot take over the possession of the subject land belonging to the respondent-Department, enjoy it, but refuse to pay the premium determined by negotiation. The petitioner had the option not to get the land on lease from the respondent-Department or he could have negotiated for better terms and conditions. Ordinarily, in the given circumstances, it was obligatory on the Custodian General to first cancel the lease hold rights of the erstwhile lessee and then put the subject land to auction so as to fetch maximum premium and higher

monthly rental. However, the Custodian General apparently, with a view to get rid of litigious lessee as also to confer benefit upon the petitioner, permitted transfer of leasehold rights from the erstwhile lessee, namely Farooq Ahmed Rather to the petitioner, but made such transfer of leasehold rights subject to certain terms and conditions which the Custodian General laid down in the impugned order. The petitioner cannot challenge the impugned order only to the extent it provides for payment of premium of Rs.1.28 lacs. Permitting the petitioner to do so would be allowing him to approbate and reprobate which conduct is not countenanced by law. Be it noted that what is transferred in favour of petitioner is existing lease of erstwhile lessee quo vacant land. The structures raised by lessee, have come to the petitioner along with land.

9. I have carefully gone through the Act of 2006 and the rules framed thereunder, but could not find that the petitioner or for that matter, any person desirous of acquiring lease hold rights in the evacuee property can claim such rights as a matter of course. As is provided in Rule 13-C of J&K State Evacuees"(Administration of Property) Rules, Svt.2008, the evacuee property vested in the Custodian General, if it is a vacant land, has to be allotted by way of auction to determine the premium payable for such property as also the periodical rental that could be charged qua such property. There is no prohibition on the respondent-Department to allot a constructed property like house, shop or other industrial complex/building by way of auction. Albeit, allotment of evacuee property, vacant or constructed, by way of auction, would promote fairness and transparency. The allotment of evacuees" properties, whatever be their kind, by way of auction is the best way of getting best price for the property and in the larger interest of evacuees for whom this property is maintained and preserved.

10. The plea of Mr. Shah learned senior counsel that since the Act of 2006 and the Rules framed thereunder do not provide for charging of premium qua the property on which the construction is raised, as such, the impugned order insofar as it provides for payment of premium of Rs.1.28 lacs is bad in the eyes of law, is without substance and cannot be accepted. The property vested in the Custodian General is a evacuee property and a statutory duty is enjoined on the Custodian General to administer the evacuee property in a manner that furthers the object of Act of 2006. Needless to emphasize that the object of the Act is to preserve and maintain the property on behalf of the evacuees and, with a view to raise revenue for such preservation and maintenance to put the property to the best possible beneficial use. Even in the absence of any specific provision, the Custodian General is well within its powers to devise ways and means to see that the evacuee property is allotted or leased out in a manner that is fair and transparent and fetches maximum revenue. The Custodian General, it may be pointed out, is a Public Officer enjoined to deal with the property of evacuees as a Trustee and it is his solemn duty as a Trustee to see that the property of evacuees is put to best use. Whenever such property is required to be leased out or allotted, it must fetch maximum revenue so that such amount could be

utilized for preservation and maintenance of the properties of evacuees. Being a Public officer, it is the bounden duty of the Custodian General to be fair and transparent in dealing with the property of evacuees.

11. That even going by the decisions taken in a meeting held on 25th June, 2010, under the Chairmanship of the then Minister for Revenue, Relief and Rehabilitation, leasehold rights in evacuee property are liable to be transferred to a third party on payment of premium at 70% and 50% of the auctionable value of structures for commercial and residential purposes respectively, (see para 4.5 of the decision). And in case of evacuee land and lien free structures, reserve price shall be determined on the basis of auctionable value of property at 70%, 60% and 40% for commercial/industrial, residential and other than commercial/ industrial/ residential purposes, (see para 4.6 of the decision).

12. When the case of the petitioner is viewed in the aforesaid context, one would not find any illegality or infirmity in the impugned order. The petitioner was never forced to take the property on lease. It was the arrangement of the petitioner with the erstwhile lessee pursuant to which a request was made to the Custodian General for transfer of the lease hold rights from the erstwhile lessee to the petitioner. The Custodian General could have very well rejected such request, but he conceded the same on the terms and conditions which he laid down in the impugned order. The petitioner was again well within his rights to reject the offer of the Custodian General but he accepted the order in its entirety except to the extent of payment of premium. Not only the petitioner entered upon the possession of the subject land, but put it to the beneficial use as well. He is in occupation of the property since prior to 2013. The plea of the petitioner that he should not be asked to pay the premium cannot be accepted for the reasons given above.

13. For all these reasons, I find no merit in this petition. The same is, accordingly, dismissed.