

(2024) 05 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : ?Latters Patent Appeal No. 182 Of 2021, Civil Miscellaneous No. 8410 Of 2021, Contempt Petition (D) No. 12 Of 2022

Abdul Rashid Zargar

APPELLANT

Vs

Union Territory Of J&K & Ors

RESPONDENT

Date of Decision : 06-05-2024

Acts Referred:

Jammu And Kashmir State Evacuee (Administration Of Property) Act, 2006 — Section 3, 10A, 10A(3), 13C, 30A, 39

Citation : (2024) 05 J&K CK 0023

Hon'ble Judges : Tashi Rabstan, J; Mohammad Yousuf Wani, J

Bench : Division Bench

Advocate : Z. A. Shah, Asif Feroz Bhat, G.J. Bala, Maleeha Zainab

Final Decision : Disposed Of

Judgement

Mohammad Yousuf Wani, J

1. Impugned in the instant Letters Patent Appeal (hereinafter referred to as "the appeal" for short) is the judgement dated 11th of November, 2021 passed by the learned Writ Court in petition bearing OWP No. 1059/2013 filed by the appellant and titled as above, whereby the said petition was dismissed as being without any merit.

2. The brief facts of the case relevant for disposal of the instant appeal are that a big chunk of evacuee land measuring 24 kanals falling under Khasra Nos. 198/87/83, 199/87/83, 200/87/83, 201-205/87/83, 188/80/89, 189/84/84, 192/86/89 and 193/86/89 situated at Estate Suthoo Kuthar Bagh, Tehsil Chadoora of District Budgam was leased out by the Custodian Department in favour of one Farooq Ahmad Rather S/o Gh. Mohammad Rather resident of Ajas Bandipora (hereinafter referred to as "the lessee") in terms of the order of respondent No. 2 i.e. Custodian General bearing No. CG(EP) 425-26/96 dated 4th of October 1996, for a period of 40 years for industrial purposes. The lease agreement was drawn between the aforesaid lessee and the Evacuee Department

on 31st of March 1998. After the property was leased out to the lessee, he raised the superstructures on the same. On 28th of May 2004, the Evacuee Department cancelled the lease of the aforesaid lessee-Farooq Ahmad Rather, on the ground of having cut down the trees illegally and raising multi-story building unauthorizedly, besides being in arrears of rent. The lessee questioned the action of the Custodian Department regarding cancellation of his lease agreement before the learned Special Tribunal and the learned Tribunal, vide its order dated 22nd of August, 2006, upheld the cancellation order of the Custodian Department. The lessee-Farooq Ahmad Rather, thereafter, threw challenge to the order of the Tribunal dated 22nd of August 2006 before this Court through the medium of Writ petition bearing OWP No. 655/2006, which was allowed vide order dated 19th of May 2010 by setting aside the aforesaid order passed by the Tribunal in a Revision Petition, with directions to proceed afresh in the matter in accordance with the law after issuing a formal notice to the lessee in respect of the alleged violations committed by him and after providing him a reasonable opportunity to submit his objections.

The respondent No. 3-Custodian Evacuee Property, processed the matter vide its order dated 6th of November 2010 and referred the same to respondent No. 2 i.e. Custodian General for fixation of premium under section 10-A of the Jammu and Kashmir State Evacuee (Administration of Property) Act, 2006 (hereinafter referred to as "the Act" for short).

The lessee, however, showed his reluctance to pay the premium on the ground that the lease in his favour was granted prior to the issuance of SRO 149 of 1985 dated 15th of April 1985 providing for payment of such premium and, therefore, he was not liable to pay the same. While this was going on, the lessee submitted an application to respondent No. 2, stating therein that he intends to transfer the leasehold rights in favour of the present appellant who has also been given full authority for dealing with the Custodian Department in respect of all the matters connected with the leased land. On the request of the lessee, made through the appellant, the case for transfer of the lease from the lessee to the appellant was processed in the office of responder No. 2. The lessee-Farooq Ahmad Rather negotiated the premium with the Custodian Department and deposited ₹ 20.00 lacs in advance through the appellant. The respondent-Department in that behalf passed an order bearing No. 217 of 2013 dated 15th of February 2013. The aforesaid order, governing the transfer of leasehold rights from the lessee to the appellant subject to various terms and conditions, inter alia as per the condition No.01, provided : -

1. " That the lessee shall pay premium of Rs. 1.28 crore (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"

Both the parties acted upon Order dated 15th of February 2013, inasmuch as the appellant took the possession of subject land and also deposited Rs 20.00 lacs on account of advance premium with respondent-department. However, subsequently, the appellant after accepting the impugned order dated 15th of February 2013 by taking the possession of the subject land and depositing the advance premium amount of Rs. 20.00 lacs, showed his reluctance to pay the remaining portion of the premium.

The appellant challenged the aforesaid Order No. 217 of 2013 dated 15th of February 2013 regarding transfer of lease in his favour before this Court through Writ petition bearing OWP No. 1059 of 2013 mainly on the ground that he is not liable to pay the premium as per the condition No. 1 of the impugned order in the facts and circumstances of the case as he has not been sanctioned a fresh lease, but has been given the leasehold rights in respect of the subject land by way of transfer from the lessee. It was also contented by him that he is ready to pay the premium amount provided the leasehold rights are transferred to him for a period of 40 years as had been done in the case of lessee. The premium amount of Rs 1.28 crores against the leasehold rights for 12 years being too exorbitant and arbitrary besides being contrary to the governing Act and rules was also agitated by the appellant. The learned Writ Court dismissed the petition filed by the appellant vide the impugned judgment dated 11th of November 2021 as being without any merit. Aggrieved by the impugned judgement, the appellant has preferred the instant appeal with the prayer for setting aside the same.

3. The appellant has assailed the impugned judgment on the grounds that the learned Writ Court has not appreciated his case in the right perspective and has proceeded on altogether different basis, which are untenable and unsustainable under law. That the learned Writ Court has proceeded on the basis that the appellant accepted the terms and conditions of the lease, transferred in his favour vide Order dated 15th of February 2013, which was impugned before the learned Writ Court and had also acquired the possession. That the terms and conditions of order dated 15th of February 2013 were not accepted by the appellant because he did not enter into any agreement with the respondent-department till date and the amount of Rs 20.00 lacs was paid by him only as Attorney Holder of the lessee-Farooq Ahmad Rather. That the learned Writ Court has erroneously considered the case between the parties as that of offer and acceptance. That the respondent-department is a creature of the act of legislature and its jurisdiction and authority is limited by the provisions of the Act and the rules framed thereunder. That under the Act, there is no provision for charging of the premium against leasehold rights prior to 1st of March 1985 and the only requirement under the Act was that the lessee had to pay monthly or annually ground rent. That the subject property when the leasehold rights therein were transferred to the appellant was not vacant piece of land but was bearing built-up super structures. That under section 13- C of the Act, premium can again be charged at the time of fresh allotment /lease. That the lessee-Farooq Ahmad Rather was not liable to pay any premium when he took the

vacant land on lease. That the period of lease transferred in favour of the appellant ought to have been 40 years. That the appellant has continued under the previous lease with the permission of the respondent-department as the lease hold rights stand transferred in his favour only for the remaining period of the lease. That the appellant can be held liable for payment of premium under the Act and rules if the subject land is granted to him as a fresh allotment or the transfer of the same is made at least for a period of 40 years. That originally the subject land was leased out to Naseer ul Gani S/o Khawaja Ali Mohammad R/o Abi Guzar, Srinagar, 02. Mohammad Kalil Zargar and 03. Nazir Ahmad Sheikh on 28th February 1985 when SRO 149 of 1985 dated 5th of April 1985 was not in existence. That subsequently, the Custodian Department vide its order dated 17th November 1994 modified the original order of lease deleting the names of all the original lessees except No. 1 i.e Naseer ul Gani and inducted lessee-Farooq Ahmad Rather. Thereafter, vide order dated 04.10.1996, lease was allowed exclusively in favour of the lessee Farooq Ahmad Rather. That the said order dated 4th of October 1996 allowing the lease in favour of the lessee also stated that he will execute the lease agreement for the remaining period of 40 years. That the lessee accordingly executed agreement with respondent-department on 31st of March 1998 in which it was expressly provided that the period of lease will commence w.e.f 1st of March 1985. That it is thus clear that lessee Farooq Ahmad Rather was not required to pay any premium because SRO 149 of 1985 was not in existence at a time of original lease commencing from 1st of March 1985.

4. We have heard the learned counsel for the parties.

5. Learned counsel for the appellant Mr Z. A. Shah Senior advocate while reiterating his stand taken by him in the memo of appeal contended that the appellant has continued under the original lease with the permission of the respondent department and as such he is not liable to pay the premium in terms of the provisions of section 13-C of the Act. He contended that the appellant cannot under law be asked to pay premium when it was not so provided when the original lease had been sanctioned. That the appellant can be asked to pay premium only under the provisions of the Act and Rules framed thereunder in case the order transferring the lease to him is treated as afresh order of lease for a period of 40 years attracting the payment of the premium. He further contended that the appellant had submitted before the learned Writ Court that huge premium of ₹ 1.28 crores was payable only if the lease was treated as a fresh one in his favour and was not authorized to be continuation of the original lease. That learned Writ Court has completely mis-appreciated and misunderstood the case of the appellant.

6. Learned Senior counsel further contended that the learned Writ Court has proceeded on the notion of the contract between the appellant and the respondent department having come into existence upon the acceptance of the offer. That terms and conditions of the lease were not accepted by the

appellant as he did not enter into any express and formal agreement with the evacuate department till date and the amount of ₹ 20,00,000 was paid by him only as attorney holder of the lessee- Farooq Ahmad Rather.

7. Mr Shah learned Senior counsel further argued that respondent department cannot act independently or in contravention of the provisions of the Act and the Rules, as there is no provision for charging of premium prior to 1st of March 1985. That the only requirement under the Act prior to 1st of March 1985 in the respect of lease of evacuate property was to pay monthly or annually ground rent and the provision for premium was subsequently incorporated in respect of the vacant lands.

8. Learned Senior counsel further contented that under Rule 13-C of the Rules of 2008, premium can be charged at the time of fresh allotment /lease when the facts of the instant case reflect the transfer/continuation of the lease for the remaining period of lease of the erstwhile lessee – Farooq Ahmad Rather, who was not liable to pay any premium when he took the subject land on lease in vacant form. He further contended that the appellant could have been asked to pay premium as fixed, had the lease in his favour been a fresh allotment for a period of at least 40 years. Learned counsel submitted that the learned Writ Court has not appreciated the case of the appellant and has proceeded on altogether different circumstances which are untenable and unsustainable under law. He prayed for setting aside of the impugned judgement.

9. Per Contra, the learned standing counsel appearing for the custodian department Mr. G.J. Bala, Advocate submitted that there is no illegality or perversity with the impugned judgement of the learned Writ Court which has been passed in accordance with the law in the backdrop of the attending facts and circumstances of the case. He contended that the contention of the appellant that he was to be asked to pay only the ground rent on monthly/yearly basis with no premium is misconceived, vague and legally untenable as the payment of the premium in respect of the subject land is obligatory under the provisions of Section 10-A (3) of the Act. He further contented that multiple number of structures stand constructed on the land in question. That the lease of erstwhile lessee in respect of the land in question was cancelled on the ground of falling of about 56 trees standing their own, construction of illegal structures without permission and also keeping the arrears of rent outstanding for more than year. That the said cancellation of the lease order was upheld by the learned J&K Special Tribunal, Srinagar on a Revision Petition filed by the erstwhile lessee.

10. The learned counsel further contented that erstwhile lessee-Farooq Ahmad Rather challenged the order of the learned Special Tribunal before this Court through OWP No.655 of 2006 and this Court directed the custodian to provide an opportunity of being heard in the matter which was afforded to him and the matter was referred for fixation of the premium to the custodian general in terms of Section 10-A of the Act. While the matter was pending before the respondent no. 2 for fixation of premium, the lessee-Farooq Ahmad Rather expressed his

reluctance to pay the premium and in order to avoid the same filed an affidavit intending to transfer leasehold rights in favour of the present appellant. That appellant negotiated the premium @5.30 lakhs per Kanal amounting to Rs.1.28 crores in total for the entire subject land of 24 Kanals and who also as a token of acceptance deposited an amount of Rs.20.00 lacs in advance for transfer of leasehold rights in his favour for the remaining period of lease.

11. The learned standing counsel further argued that the contention of the learned counsel for the appellant that no premium is livable in the case in terms of Rule 13 C of the Rules of 2008 as the lease of erstwhile lessee-Farooq Ahmad Rather was in force before 5th of April 1985 is not justified under law because the payment of premium is provided under the provisions of Section 10-A (3) of the Act itself with effect from 1977. He further contented that if the appellant feels aggrieved of the payment of premium, let him surrender the leasehold rights and vacate the premises. Further contended that Evacuee Department is likely to fetch above Rs.50.00 lacs per kanal premium in open auction in respect of the subject land which is situated at a prime place near the railway station Nowgam in close vicinity of Srinagar having a very high potential and market value and more especially in which the appellant is running "Master Pro Engineering College'.

12. Mr. Bala learned advocate further contented that the basic writ petition culminating into the impugned judgment was not maintainable for the reasons that the appellant did not avail of the statutory remedy under Section 30-A of the Act and secondly preferred to file the writ petition raising disputed questions of fact therein.

13. We have gone through the record of the instant appeal file and have also accorded due consideration to the rival arguments advanced on both the sides.

14. Keeping in view the aforementioned perusal and consideration in the light of law on the subject, we do not find any illegality with the impugned judgement dated 11th of November 2021 passed by learned Writ Court in OWP No.1059 of 2013.

15. Without unnecessary repetition of the pleadings and the rival contentions of the parties we only prefer to make our material observations.

16. It is not disputed that extension of lease in respect of the subject land measuring 24 Kanals under survey No. 198/87/83, 199/87/83, 200/87/83, 201-205/87/83, 188/80/89, 189/84/84, 192/86/89 and 193/86/89 situated at Estate Suthoo Kuthar Bagh, Tehsil Chadoora of District Budgam was originally granted under the orders of respondent No.2 bearing CJ EP-2120-21/85 dated 28th of February 1985 in favour of Naseer ul Gani S/o Khawaja Ali Mohammad R/o Abi Guzar, Srinagar, 02. Mohammad Kalil Zargar and 03. Nazir Ahmad Sheikh for a period of 40 years obviously with effect from 28th of February 1985. Subsequently in partial modification of the aforementioned order dated 28th of February 1985, the respondent No.2 accorded deletion of the

aforementioned lessees except Shri Naseer ul Gani S/o Khawaja Ali Mohammad R/o Abi Guzar, Srinagar with the simultaneous permission to the induction of Farooq Ahmad Rather S/o Ghulam Mohammad Rather R/o Ajaz Bandipora, as partner of the surviving erstwhile lessee namely Naseer ul Gani. The said partial modification was accorded by the office of responder No.2 vide his number dated 17th of November 1994. Subsequently, in further partial modification of all previous orders the name of Shri Naseer ul Gani was deleted thereby maintaining the lease in respect of the subject land in favour of Farooq Ahmad Rather-lessee only for the remaining period of the lease of 40 years subject to the stipulations of the earlier order dated 28th of February 1985. The said partial modification of the order came to be issued by the office of responded No.2 vide his No. CJ(EP) P/425-26/96 dated 4th of October 1996. The said lessee-Farooq Ahmad Rather is reported to have executed the lease agreement on 31st of March 1998 in which it was expressly provided that the period of lease shall be 40 years with effect from 1st of March 1985. It is also the admitted case of the appellant that the lessee-Farooq Ahmad Rather raised the superstructures on the subject land after taking over the possession thereof pursuant to the Order dated 4th of October 1996 followed by the agreement dated 21st of March 1998.

17. It is also undisputed that the respondent-department cancelled the lease favouring the lessee-Farooq Ahmad Rather vide order dated 28th of May 2004 on the ground that he had fell down trees illegally with the raising of multi storied building without permission beside being in arrears of rent. It is also admitted by both the parties that lessee-Farooq Ahmad Rather challenged the cancellation order passed by respondent No.2 dated 28th of May 2004 before the learned Special Tribunal Srinagar, which vide order dated 22nd of August 2006 passed on the revision petition upheld the cancellation order of respondent No.2. Against the order of the learned Special Tribunal, lessee preferred to file the writ petition before this Court which came to be registered as OWP No.655 of 2006. The said writ petition came to be decided by this Court vide order dated 19th of May 2010 with directions to proceed afresh in the matter in accordance with the law after issuing the formal notice to the lessee in respect of the alleged violations committed by him and after providing him a reasonable opportunity to submit his objections. Thereafter respondent No.3 passed a detailed Order dated 06.11.2010 in compliance to the Order passed by this Court dated 19.05.2010 in OWP No. 655/2006 and submitted the case to the office of respondent No.2 for fixation of premium under Section 10-A of the Act.

18. The lessee-Farooq Ahmad Rather expressed his reluctance as regards the payment of premium on the ground that he has been continuing with the earlier lease dated 28th February 1985 before the issuance of SRO 149 of 1985 dated 05.04.1985 providing for payment of premium. He also agitated his reluctance on the ground that lease in respect of the subject land was already granted in favour of various persons without charging any premium.

19. It is also admitted on both the sides that while the case was still pending

before the office of respondent No.2 for fixation of premium in terms of provisions of Section 10-A of the Act, the lessee- Farooq Ahmad Rather submitted an application/affidavit stating therein that he intends to transfer the leasehold rights in favour of the present appellant who has been authorized by him to transact with the evacuee property department on all matters connected with the subject land.

20. It is the case of the respondent-department that the application/affidavit of the lessee-Farooq Ahmad Rather was processed in accordance with the law and present appellant negotiated with the department in respect of the premium which was fixed @ 5.30 lacs per kanal amounting to Rs. 1.28 crores in total for the entire chunk of subject land. The application/affidavit of the lessee- Farooq Ahmad Rather with the request for transfer of leasehold rights in favour of the present appellant is reported to have culminated into order No. 217 of 2013 dated 15.02.2013 which was impugned before the learned Writ Court. The said order dated 15.02.2013 of respondent No.2 is subject to various terms and conditions inter alia a condition at its Serial No.1 to the effect:-

"01. That the lessee shall pay premium of Rs. 1.28 crore (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"

21. Thus, it is clear that after negotiating the terms as regards the payment of premium by both the erstwhile lessee- Farooq Ahmad Rather as well as the proposed transferee of the leasehold rights i.e. the present appellant Ab. Rashid Zargar, they made respondent No.2 to pass order dated 15.02.2013 and the present appellant in agreement of the said order deposited the advance amount of Rs. 20.00 lacs with the respondent-department.

22. Thereafter for the reasons better known to him, the appellant expressed his reluctance to pay the balance amount of the premium as per the order dated 15.02.2013 on the grounds hereinbefore mentioned and upon his failure to convince respondent Nos. 2 and 3, assailed the said order dated 15.02.2013 before this Court through Writ petition bearing OWP No. 1059/2013 which came to be decided through impugned judgement dated 11.11.2021, by dismissing the petition of the appellant as meritless.

23. We have gone through the impugned judgement and there appears to be no illegality or infirmity in the same.

24. Learned Writ Court has rightly observed in the attending facts and circumstances of the case that "the petitioner/appellant was never forced to take the property on lease, it was his arrangement with the erstwhile lessee-Farooq Ahmad Rather pursuant to which a request was made to the Custodian General for transfer of the leasehold rights in his favour. That custodian general could

have very well rejected such request, but he conceded the same on the terms and conditions of the order impugned. That 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 extend of payment of remaining premium amount. That the petitioner not only entered upon the possession of the subject land but put the same also to his beneficial use as well. He is in occupation of the property since 2013. That the plea of the petitioner that he could not be asked to pay the premium cannot be accepted under law”.

25. We are in agreement with the argument of learned standing counsel for the respondents Mr. G.J. Bala, Advocate to the effect that Section 10-A Clause (3) of the Act which stands inserted by the amendment of 1977 provides that for fixation of premium in case of allotment of the vacant evacuee land whereon structure stands raised on or after first day of January 1988 in addition to the annual ground rent.

26. Respondent No.2 had cancelled the lease in favour of the lessee- Farooq Ahmad Rather on the ground of violation of the terms and conditions of the lease order by felling trees, raising unauthorized structures and making default in payment of rent. Subsequently, after being disappointed from the learned Special Tribunal, Srinagar, he preferred an earlier Writ petition before this Court in which directions were made for fresh disposal of the matter after affording an opportunity of being heard to the said lessee. In the process of dealing with the case pursuant to the order of this Court passed in the aforementioned earlier Writ petition, the issue of fixation of premium under Section 10-A clause (3) of the Act came to be addressed to during which process the lessee- Farooq Ahmad Rather filed an application/affidavit before the respondent-department with the request to transfer the leasehold rights in respect of the subject land in favour of the present appellant. The request of the lessee was accepted and the appellant negotiated with the department in respect of the fixation of premium,

27. The order impugned in the basic Writ petition came to be passed in favour of the present appellant subject to some terms and conditions inter alia condition providing for the payment of premium @ 5.30 lacs per kanal. The appellant accepted the terms and conditions of the order, took over the possession of the subject land and deposited Rs. 20.00 lacs on account of advance premium. Under these facts, the lessee- Farooq Ahmad Rather is deemed under law to have vacated the leasehold premises. So, there was no bar for the respondent-department to fix the premium in terms of the provisions of Section 10-A Clause

(3) while making the allotment of the leasehold rights in respect of subject land upon transfer in favour of the present appellant. For all practical purposes, the leasehold rights in respect of the subject land stand allotted to the present appellant vide Order No. 217 of 2015 dated 15.02.2013 and the fact of the allotment being by way of transfer is immaterial. It is the admitted case of the appellant that lessee- Farooq Ahmad Rather upon being granted the leasehold rights exclusively on 04.10.1996 raised super structures thereon and thus the

fixation of the premium in terms of the provisions of Section 10-A Clause 3 of the Act in the case is justified under law.

28. The rules under the Act came to be framed by the Government in exercise of the powers conferred by Section 39 of the Act in the year Svt 2008 corresponding to the year 1951 A.D. Rule 13 -C of the rules of 2008 also provides for fixation of the premium besides ground rent in respect of the lease of vacant evacuee land.

29. This Court has already in case titled " Custodian Evacuee Property Vs. Gh. Nabi Dar" 2009 (3) JKJ 645 held under similar circumstances that Rule 13-C of the rules of Svt2008 is attracted and applicable for determination of the premium where the erstwhile lessee/allottee surrenders his leasehold rights before re-allotment of the said land or portion thereof. It is profitable to reproduce the relevant Para 37 of the judgement for ready reference as under:-

"37. In the instant case, the lease was to be made in favour of the writ petitioners, who were claiming themselves to be tenants at will, therefore, Rule ! 3 (c) would be applicable for determination of the premium. Even otherwise going by the view that Rule 13 (c) applies to the land which is vacant and not in possession of any person, still said rule shall apply in respect of the land in issue; because as per the settlement reached, firstly the writ petitioners would have to surrender their all rights whatever they have over the entire land in issue in favour of custodian, whereafter out of the said land a portion of it has to be given to them on lease. Therefore, at the time when the lease is to be granted by the custodian, the entire land free from all encumbrances would be available with the custodian for being leased out and as such the said land would be a vacant land within the meaning of Rule 13 (c)."

30. Without prejudice to our opinion that the provisions of Section 10-A clause 3 of the Act and Rule 13-C of the Rules of Svt2008 are attracted in the case for determination of the premium in addition to ground rent, the present appellant in our view has consented to the order dated 15.02.2013 which is evidenced by his entering into the possession of the subject land and more especially the deposition of Rs. 20.00 lacs by way of an advance part payment of premium. Learned Writ Court has very rightly observed that appellant/petitioner cannot accept the beneficial terms and conditions of the lease and avoid those which are unpalatable or may not be profitable to him. Learned Writ Court has also rightly observed that petitioner/appellant cannot challenge the impugned order only to the extent it provides for payment of premium of Rs. 1.28 crores. Permitting the petitioner/appellant to do so would be allowing him to approbate and reprobate which conduct is not countenanced by law and has also rightly observed and opined that what is transferred in favour of the petitioner/appellant is existing lease of erstwhile lessee qua vacant land.

31. The appellant in the facts and circumstances of the case is estopped under law to dispute the condition No. 1 of Order dated 15.02.2013 of respondent No.2

and that too after implied acceptance of the same. Even as per the provisions of the Rule 13-C of the Rules of 2008, the respondent-Department in the given circumstances ought to have put the subject land to auction giving liberty to the present appellant to participate in the auction process.

32. There is an admission on part of the appellant as is reflected from para 07 of the memo of appeal to the effect that even the lessee- Farooq Ahmad Rather, negotiated the premium with the department purportedly under Section 10-A of the Act and deposited Rs. 20.00 lacs in advance through his Attorney Holder (appellant herein) as stated in the order dated 15.02.2013.

33. Jammu and Kashmir State Evacuee (Administration of Property) Act, 2006 is aimed at to administer the evacuee property and not to create the relationship of landlord and lessee between the Custodian Department and the allottee, to be governed by rent laws. Section 3 of the Act is reproduced as under:-

"3. Act to override other laws (1) The provisions of this Act

and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

(2) for the removal of doubts, it is hereby declared that nothing in any other law controlling the rents of, or evictions from, any property shall apply or be deemed ever to have applied to evacuee property."

34. It is also needful to mention that even as per the decisions reported to have been taken by the Government on 25th June, 2010 reference to which is available on the impugned judgment, the leasehold rights in evacuee property are liable to be transferred to a third party on payment of premium at 70% and 50% auctionable value of the structures for commercial and residential purpose respectively (See para 4.5 of the decision) when in case of evacuee land and lien free structures, reserved price shall be determined on the basis of the auctionable value of the property at 70%, 60% and 40% for commercial/ industrial residential and other than commercial/industrial purposes (See Para 4.5 of the decision).

35. The contention of the appellant that lease was granted in favour of the appellant for the remaining period of the lease of the erstwhile lessee- Farooq Ahmad Rather, operates as no legal bar for fixation of premium as according to the provisions of Rule 13-C, lease of any evacuee vacant land can be made for a period not exceeding 40 years.

36. In the backdrop of the afore made discussion, there seems to be no illegality or infirmity with the impugned judgment dated 11th November 2021 passed by learned Writ Court. Same appears to be well reasoned and sustainable. Accordingly the instant appeal is dismissed as meritless.

CCP (D) No. 12/2022.

37. Order dated 9th October 2023 passed in detail directs the compliance of the order dated 29th January 2022 in its letter and spirit by the respondents. By virtue of the said interim order dated 29th January 2022 passed during the pendency of the main appeal, this Court stayed the impugned judgment of the learned Writ Court with the simultaneous direction for maintenance of possession on spot as existed on the date of passing of the impugned judgment dated 11th of November 2021.

38. The respondent No.3 in his statement of facts in response to the contempt petition inter alia submitted that the main building of the institute came to be unsealed in terms of Order bearing No. CERS/LS 4007-09 dated 19th March 2022 in compliance to the order dated 29th January 2022 of this Court passed in the contempt petition. However, it was admitted by respondent No.03 in the statement of facts dated 7th November 2022 that the building i.e. Master Pro Institute of Technology Nowgam Srinagar was sealed by the department pursuant to the dismissal of the Writ petition bearing OWP No. 1059/2013 for non-prosecution on 28th July 2021 and continued to be sealed after the restoration of the same and until the same was finally dismissed on merits vide judgement dated 11th November 2021 impugned in the LPA. The appellant has, however, rebutted the facts vide his response dated 14th March 2023. The learned Standing Counsel for the Evacuee Department has however submitted at Bar that interim order dated 29th January 2022 stands already complied with in its letter and spirit. This contempt petition is, accordingly, closed pursuant to the statement of respondent No. 3 made through his standing counsel.

39. With the dismissal of the instant appeal, the condition No.1 attached to the Order bearing No. 217 of 2013 dated 15th February 2013 stands maintained. Upon the failure of the appellant to pay the balance amount of premium along with the annual/monthly rent if any within a reasonable time to be fixed by respondent-department, the latter shall be at liberty to initiate action against the appellant as warranted under the Act and the Rules.

40. Disposed of.