

(2020) 10 J&K CK 0033
In the Jammu And Kashmir High Court
Case No : Other Writ Petition No. 886 Of 2006

Ashwani Kumar And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 16-10-2020

Acts Referred:

Citation : (2020) 10 J&K CK 0033

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Ashwani Thakur, Vishal Sharma

Final Decision : Dismissed

Judgement

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Tashi Rabstan, J

1. The petitioners had approached this Court way back in the year 2006, praying for the following reliefs :-

"Petition for a writ, order or direction in the nature of Certiorari or any other appropriate writ, seeking to call for the relevant record and declare that the land in Khasra No. 140/38, 141/38, 39, 41, 42 and 43, measuring respectively 1 Kanal and 10 Marla, 4 Kanal and 14 Marla, 2 Kanal and 6 Marla, 2 Kanal and 10

Marla, 3 Kanal and 5 Marla and 2 Kanal and 12 Marla - in all measuring 18 Kanal and 12 Marla - situated at Kamini (Nagrota), Tehsil and District Jammu, is not wholly or partly requisitioned, and was never in possession of the Army, and if at all any part of it was ever requisitioned, such requisitioning was rendered null and void, ineffective and inoperative by reason of such requisitioning not having been ever acted upon, enforced or given effect to, and quash such requisitioning, if there be any, and release and deem and treat to be released the land there from, and direct the concerned respondents not to interfere with the said land and the petitioners' possession of the same, and further to direct them to remove all their men and material, if at all they bring any upon it in the meantime, and make good the loss caused to the petitioners and pay them compensation for the damage caused to their fencing of the said land and their trees and crops grown thereon, along with interest, and for any other writ, order or direction that this Hon Court may deem just, fit and proper in the circumstances of the case."

2. Learned counsel for the petitioners submitted that there is no document to establish that the land of the petitioners was never requisitioned as no notification had been issued. They have never been paid any rent for the same, hence, a declaration is required to be issued that the land of the petitioners was never requisitioned by the respondents and in case it was requisitioned, the requisition may be set-aside as the land is lying open and the petitioners are also not being paid any rent.

3. Learned counsel for the respondents submitted that the claim of the writ petition itself shows that it is a suit for declaration. There are disputed questions of fact involved and the petitioners only want a roving inquiry to be made as nothing has been made out on record. All the issues, which the petitioners have raised in the petition, will need evidence and on the basis thereof, this Court will have to record a finding. The proper remedy for the petitioners would be to file a civil suit so that both the parties have full opportunity to lead evidence and the learned court below may record a specific finding thereon.

4. After hearing learned counsel for the parties, in my opinion, reliefs as have been prayed for by the petitioners in the present petition, cannot be granted in writ jurisdiction. The first prayer made by the petitioners is that a declaration be issued that the land as specified in the writ petition is not wholly or partly requisitioned and was never in possession of the army. To record such a finding, both the parties will be required to lead evidence and on the basis thereof only a finding can be recorded. Such an issue cannot be decided merely on the basis of affidavits filed in a writ petition. In writ jurisdiction the petitioners cannot call upon this court to record findings of fact. The question as to whether the petitioners have been paid any rent or are entitled to the same is also a matter of evidence, which again will depend on the findings on the first issue. It is only after those facts are established that the petitioners can avail of any other remedy available to them for the relief, which they may be seeking.

5. For the reasons mentioned above, in my opinion, the present writ petition is not maintainable. The same is accordingly, dismissed. However, the same will not debar the petitioners from availing of their any other appropriate remedy available to them for the relief of declaration and possession as prayed for in the present petition.