

(2020) 09 J&K CK 0035

In the Jammu And Kashmir High Court

Case No : Civil Revision No. 59 Of 2020, Civil Miscellaneous No. 473, 4740 Of 2020

Ejaz Ahmad Tak

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 15-09-2020

Acts Referred:

Jammu And Kashmir Public Premises (Eviction Of Unauthorised Occupants) Act, 1988
— Section 5(1), 12
Constitution Of India, 1950 — Article 227

Citation : (2020) 09 J&K CK 0035

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : P.N.Raina, J. A. Hamal

Judgement

Sanjeev Kumar, J

CM No.4740/2020

Let the deficiencies be made good as per Circular No.16/GS dated 29th March, 2020 upon removal of the current lockdown.

CR No.59/2020

1. The petitioner, an ex-Public Prosecutor of the State, invokes the power of superintendence of this Court vested by Article 227 of the Constitution of India seeking, inter alia, quashment of the impugned notice bearing No.DDE/J/305 dated 07.09.2020 issued by respondent No.3 in his capacity as Estate Officer. In terms of the impugned notice, the petitioner has been called upon to vacate Flat No.303-EP Wazarat Road, Jammu. The notice is purportedly issued by the Estate Officer in exercise of powers conferred under Sub-Section 1 of Section 5 of the J&K Public Premises (Eviction of Unauthorized Occupants) Act, 1988 (hereinafter, "the Act").

2. Admittedly, the impugned notice is appealable under Section 12 of the Act. As

a matter of fact, the appellant has availed of the remedy and has filed an appeal before the District Magistrate (Deputy Commissioner), Jammu. The grievance of the petitioner, as projected in this petition, in short, is that despite the fact that he has availed of the statutory remedy of appeal under the Act, yet in view of the non-availability of the appellate authority to consider his appeal and pass appropriate orders on merits, the petitioner has been pushed to a stage where he can be evicted from the premises at any time. It is claimed that in case the appeal remains pending and is not considered by the appellate authority and in the meanwhile, the petitioner is evicted, his appeal will become infructuous and he would be deprived of his right as conferred by Section 12 of the Act.

3. The petitioner has placed on record copy of the appeal as also some whatsapp messages sent to the office of the District Magistrate, Jammu but it is not clear as to on what date the online appeal was preferred before the appellate authority.

4. Be that as it may, if the petitioner has availed of the remedy of appeal conferred by Section 12 of the Act and the digital copy of appeal has been received by the office of District Magistrate, the same needs to be considered for passing appropriate orders on merits. Eviction of the appellant, pending consideration of his grievance projected in the appeal statutorily available to him, would not be in consonance with law and would render the petitioner remediless. Such a situation cannot be countenanced by law. This Court appreciates the fact that in the given unprecedented situation created by Covid-19 pandemic, the District Magistrate is hard pressed for time and may not, genuinely, be available to hear the appeal. However, in view of what is said above, the petitioner, too, cannot be left remediless. Whether or not the petitioner has a case on merits is required to be considered by the appellate authority and, therefore, this Court has consciously not touched upon the merits of the case.

5. In view of the totality of circumstances obtaining in the case, I deem it appropriate to dispose of this writ petition along with connected application at the threshold stage by providing as under:-

i) A copy of this order along all annexures including memo of appeal filed by the petitioner shall be transmitted online by the Registry of this Court to the office of District Magistrate, Jammu.

ii) The office of the District Magistrate, on receipt of the digital copy of this order as also the appeal shall proceed, at the first available opportunity, to consider the same for passing of the interim order or taking it up for final consideration after intimating the petitioner and affording him an adequate opportunity of being heard.

iii) Till an appropriate orders, as may be warranted on merits, are passed by the District Magistrate, Jammu (appellate authority), status quo with regard to the possession of the petitioner viz. Flat No.303-EP Wazarat Road, Jammu shall be maintained.