

(2023) 12 J&K CK 0034

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No.1238 Of 1993

Ghulam Hassan Wani

APPELLANT

Vs

State Of J&K And Ors

RESPONDENT

Date of Decision : 15-12-2023

Acts Referred:

Citation : (2023) 12 J&K CK 0034

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Nisar Ahmad Bhat, Rekha Wangnoo

Judgement

Sindhu Sharma, J

1. Notified Area Committee, Gulmarg/Tangmarg vide Order dated 20.10.1998 accorded sanction for installation of STD/PCO booth at Gulmarg near gypsy type shops in favour of petitioner by way of construction of Khoka type shop. Petitioner also executed Agreement dated 28.12.1999 and subsequently started running a tea shop from the said shop and paying rent regularly.

2. The grievance of the petitioner is that the Municipal Committee decided to dismantle the old shops and construct 12 new shops on the site in front of Hotel Yemberzal at Gulmarg and the proposal was moved for rehabilitation of those persons whose khoka type shops were dismantled. The respondents allotted and handed over the new shops, after the construction of shopping line was complete, to the erstwhile tenants except petitioner. The petitioner, thus, seeks a direction to the respondents to rehabilitate and allot him shop no.9 in newly constructed shopping line at Gulmarg and restrain the respondents from allotting shops earmarked for petitioner to any other person and allow him to run his business at the present place.

3. The respondents 1, 2, 4 & 6 in their objections have admitted that the petitioner was in possession of kiosk shop allotted to him by the Gulmarg Development Authority during the year 2005. The Municipal Committee had

constructed 12 number of shops on the site in front of Hotel Yemberzal at Gulmarg and proposal for rehabilitation was submitted to Director, Local Bodies, Kashmir, on 26.12.2014 and the respondent no.6 referred the same to the Government and accordingly, approval for rehabilitation of seven number of old Gypsy type shops was conveyed to them with a direction to put the remaining five shops to open auction. There was no proposal or any order for rehabilitation of the petitioner. It is also stated that allotment to the petitioner was for the period of one year and there was no extension of the same.

4. The respondent no.5 in his objections has submitted that the petitioner was running a tea stall on the place allotted to him by the erstwhile Gulmarg Projects Organization. However, the said structure was dismantled and the petitioner was allotted a kiosk type shop near J&K Bank at Gulmarg long back in the year 2005, in which he is presently running tea stall.

5. The petitioner initially was allotted a shop for running STD/PCO Booth on his application vide sanction order dated 20.10.1998, issued by Administrator, Notified Area Committee Gulmarg/Tangmarg. This allotment was for a period of one year. Subsequently, agreement between the parties was also executed on 28.12.1999, which was for a period of ten years. It appears that in the year 2005, the respondent, Gulmarg Development Authority, again allotted shop no.1 out of kiosk type shops near Hotel Yemberzal at Gulmarg to petitioner and the petitioner in the said allotted kiosk started running his tea stall.

6. The respondents admittedly started reconstruction of the area and demolished khoka type shops which were reconstructed as gypsy type shops in terms of communication/order dated 29.01.2011.

7. The petitioner's contention is that his shop was also demolished but after reconstruction the petitioner was not allotted the shop no.1 while other people, who are similarly situated, have been allotted the shops.

8. The respondent no.5 in his objections has stated that the petitioner was already allotted kiosk type shop near J&K Bank long back in the year 2005 vide allotment order dated 31.03.2005, in which he was running tea stall. The structure which has been demolished is other than the kiosk shop of the petitioner.

9. The petitioner has placed on record two communications in support of his claim. First communication dated 29.01.2011, is his representation for allotment of shop in front of Hotel Yemberzal at Gulmarg, in which Executive Officer, Municipal Committee, Tangmarg/Gulmarg, has stated that since the gypsy type shops for which allotment was made on 20.10.1998, made in favour of petitioner is to be dismantled and reconstruction of the same would require removal of Kiosk Type shops. Therefore, his tenancy for rehabilitation is protected under rules. The second communication by Executive Officer, Municipal Committee, Tangmarg/Gulmarg, clearly states that petitioner's shop was demolished. However, it is stated by respondents in their objections that initial agreement

was with the Municipal Committee Tangmarg/Gulmarg, by the petitioner on 28.12.1999, for a period of ten years and subsequently the rent was paid towards Gulmarg Development Authority with respect to the allotted kiosk shop vide allotment order dated 31.03.2005. Thus, from these communications and the response of the Municipal Committee, Tangmarg/Gulmarg, it is clear that only one khoka type shop was allotted to the petitioner which was demolished during reconstruction.

10. The communication of the respondent also reveals that twelve (12) number of shops were reconstructed during the rehabilitation project and seven (07) were allotted to the erstwhile tenants, however five (5) were put to auction. The petitioner's claim, it appears, was not considered by the respondents and these five (5) shops were allotted to other persons. Nothing has been brought on record to show whether these five (05) shops have already been allotted or are still in possession of respondents.

11. Be that as it may, the petitioner's tenancy with respect to his entitlement for allotment of a shop has not been decided as has been done in respect of other similarly situated persons. The respondents are, thus, required to consider and decide the petitioner's case for allotment of a shop on the same lines as has been adopted in regard to similarly circumstanced persons.