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**(2020) 08 J&K CK 0066**

**In the Jammu And Kashmir High Court**

**Case No :** Writ Petition (C) No. 1284 Of 2020, Civil Miscellaneous No. 3975 Of 2020

Jameel And Others

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

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**Date of Decision :** 11-08-2020

**Acts Referred:**

**Citation :** (2020) 08 J&K CK 0066

**Hon'ble Judges :** Vinod Chatterji Koul, J

**Bench :** Single Bench

**Advocate :** Sheran Mirza, S. S. Nanda

**Final Decision :** Dismissed

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## **Judgement**

Vinod Chatterji Koul, J

1. Petitioners claim that they belong to Nomadic Bakarwal community and almost 60 to 65 years back they along with other 25 families on the assurance of the then Revenue Minister, were asked to settle at Nazami Basti, Roop Nagar, Jammu, and in this regard Divisional Commissioner, Jammu was also directed by the then Revenue Minister that regularisation of the colony, i.e. Nazami Basti, be taken and allot the land in favour of petitioners along with other 25 houses of Bakarwal community. Petitioners also maintain that they are ready to pay the rates of the land because they have raised Pacca structure/ houses, some 43 years back in view of letter dated 4th January 2007 issued by the Divisional Commissioner, Jammu. It is contended in writ petition that case of petitioners for regularization of colony is pending since 13 years back but till date no concrete step has been taken despite the fact that the Government has regularized almost 20-50 colonies in different areas of Jammu and Srinagar but deliberately left the colony of petitioners because they were Nomadic and soft target and as and when there must be some pressure from the Government, respondents thereafter demolished the house of the people, like petitioners, because they are Nomadic and have no idea to approach the court and nobody listens them.

2. It is also averred in writ petition that Deputy Commissioner, Jammu, on the application of public of Nazami Basti, Roop Nagar, Jammu, including petitioners, sought a detailed report from SDM, Jammu North, who along with Tehsildar and Forest Range Officer visited the area of Nazami Basti and found that there is no encroachment on the forest land by petitioners and other Nomadic families. Forest Department has fenced graveyard by barbed wire, where parents of petitioners along with other Nomadic families, were buried. Forest Department has not allowed the entry of petitioners and other families, which, according to petitioners, is totally injustice with petitioners as well as other Nomadic families. Petitioners further state that they have raised their Pacca houses over a piece of land and their case for regularization of land is pending before the respondent no.1 but till date, despite lapse of 13 years, no concrete step has been taken. Children of petitioners along with other nomadic families, in order to educate them, were admitted in different schools, which is the constitutional right of the petitioner's children. In the year 2017 an FIR was registered against petitioner no.2 and other persons in which it was alleged that petitioner encroached Forest land in compartment no. 3/P at Upper Roop Nagar, Jammu. Police Station Janipur, Jammu, forwarded communication dated 27.10.2017 for conduct of demarcation of aforesaid compartment no. 3/P. It is also stated that Patwari Halqa Paloura submitted the report that Forest Department had already fenced the land and it also fenced graveyard of Nazami Basti, Roop Nagar, Jammu, and also reported that petitioners and other nomadic families were residents of the area for last 60-62 years. Naib Tehsildar, Mishriwala, reported that Forest Department had fenced the land with barbed wires and Nazami Basti was situated outside Forest area. Thereafter Tehsildar, Jammu North vide letter dated 24.12.2018 forwarded the report to SHO P/S Janipur, Jammu, intimating that Nazami Basti, Roop Nagar, Jammu, was situated outside the fenced area raised by Forest Department, thereby clearly establishing that land claimed by respondents 2 to 4 is not the Forest land. Police Station Janipur filed closure report with respect to the FIR filed by the Range Officer of Forest Department thereby establishing that petitioners' houses are situated outside Forest land. Despite the fact that houses of petitioners are outside Forest land, Forest Department has issued show cause notice against them. Petitioners assert that it is quite strange that respondents 2 to 4 have not issued show cause notice to other persons of the area including petitioner no.2 but have orally told that they would dismantle houses of petitioners and therefore, they are apprehensive that respondent no.2 to 4 may forcibly and illegally dismantle houses of petitioners, that too arbitrarily because the said land does not belong to respondents 2 to 4 or Forest Department.

3. It is also stated in writ petition that Union Territory of Jammu and Kashmir has also issued a circular in compliance to judgment dated 16.12.2010 passed by the Supreme Court in case titled People's Union for Civil Liberties V/s Union of India and others and had passed instructions to all the instrumentalities of the State not to demolish any night shelter without providing proper alternate night shelter

till further orders. According to petitioners, the sweep of abovementioned judgment speaks of the volumes of constitutional rights even if someone is held to be an encroacher. It is also avowed that on one hand Government of India is providing shelter to the people under Pradhan Mantri Awas Yojna but on the other hand without any alternate arrangement, petitioners are being threatened to be evicted from the land and have been even threatened of demolishing their houses which are the only shelter available to them.

4. Petitioners on the edifice of case set up in writ petition on hand, seek following relief:

"i. Mandamus, commanding and directing the respondents to regularize the land in the possession of the petitioners in view of the provisions of the Roshni Act as the petitioners have fully eligible for the same and further directs the respondents not to disturb the present position of the petitioners till the policy for the rehabilitation/regularization of Nazami Basti was framed, in view of the communication dated 04.01.2007 forwarded by Divisional Commissioner to the respondent no. 1.

ii. Commanding and directing the respondents to take the decision on the communication dated 04.01.2007 forwarded by the Divisional Commissioner, Jammu to the respondents and till the decision was taken the respondents be directed not to disturb the present position of the petitioners/till the policy for the rehabilitation/regularization of Nazami Basti was framed.

iii. Commanding and directing the respondents not to demolish/ dismantle the residential houses raised by the petitioners situated at Nazami Basti, Roop Nagar, Jammu, as the petitioners belongs to Nomadic community and have the right to use the land in view of the provision of the Forest Act.

iv. Commanding and directing the respondents not to demolish the night shelter of the petitioner as the same is violative of the judgement passed by the Hon'ble Supreme Court in case title "Peoples Union for Civil Liberties V/s Union of India 8& Ors" vide order dated 16.12.2010 and also violative of the circular issued by the respondent No.1 dated 11.03.2011."

5. Heard and considered.

6. Given the case set up and submissions made by learned counsel for petitioner, it would be apropos to have glance of Show Cause Notice dated 8th July 2020, issued by Divisional Forest Officer, Jammu Division - respondent no.3, inasmuch as it appears from the averments of writ petition that it is after issuance of Show Cause Notice that petitioners have approached this Court with writ petition on hand. Show Cause Notice mentions that respondent no.3 has received a case from Range Officer, divulging thereby that petitioners have illegally constructed one structure (Brick Masonary without RCC slab) on forest land measuring approximately 01 Kanal in village Paloura (Upper Roop Nagar) falling in Compartment no.3/P of Palour Forest Block in gross violation of Indian Forest

Act. Petitioners, as is coming forth from Show Cause Notice, have been asked to show cause as to why eviction should not be passed against them. It is unequivocally gathered from Show Cause Notice that the same has been issued in terms of Indian Forest Act, and Public Premises (Eviction of Unauthorised Occupants) Act 1971.

7. It is pertinent to mention here that both the Acts, viz. the Indian Forest Act, and the Public Premises (Eviction of Unauthorised Occupants) Act 1971, provide issuance of show cause notice before proceeding ahead in the matter for removal of unauthorised occupation. A full-fledged mechanism is ingenerated in both the Acts. Taking into account the provisions of the Indian Forest Act and the Public Premises (Eviction of Unauthorised Occupants) Act 1971, respondent no.3 has rightly issued Show Cause Notice upon petitioners. It is made clear here that petitioners are required to reply the Show Cause Notice. Instead of replying the show cause notice, they have directly approached this Court with instant writ petition.

8. The Supreme Court in Union of India and another Vs. Kunisetty Satyanarayana, 2006 (12) SCC 28, has held that writ petition is not maintainable against a show-cause notice. The said judgement squarely applies to present case. Thus, it would be profitable to extract following passage of paragraph 14 of the said judgment in this regard:

"14. .... A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."

9. From the above excerpt, it is conspicuous that issuance of show-cause notice does not give rise to any cause of action. Issuance of show-cause notice does not amount to an adverse order, affecting rights of any party as it is quite possible that upon considering the reply, the show-cause notice may be withdrawn and proceedings, if any, initiated dropped. The Supreme Court has said that a writ lies when some right of any party is infringed and mere show-cause notice does not infringe the right of anyone. Same is true about the present case.

10. Bearing in mind the above principle laid down by the Supreme Court and looking to the case in hand from all angles, I have come to the conclusion that show-cause notice do not reveal pre-determination of mind and hence, the writ petition is liable to be dismissed.

11. For the reasons discussed above, writ petition is dismissed along with

connected CM(s).