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**(2009) 10 J&K CK 0025**

**In the Jammu And Kashmir High Court**

**Case No :** Civil Miscellaneous Petition Nos. 361 Of 2009 and 667/09 in Others  
Writ Petition (OWP) No. 295/09

Mehraj-ud-din Yatoo & Ors.

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

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**Date of Decision :** 01-10-2009

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2009) JKJ 276 Supp

**Hon'ble Judges :** Muzaffar Hussain Attar, J

**Bench :** Single Bench

**Advocate :** G.J.Bala, G.A.Lone, S.T.Hussain, Advocates appearing for the Parties

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**Judgement**

1. In the writ petition filed by the applicants following reliefs are sought;

i. that the respondents may be summoned and a writ of Mandamus declaring the definition of ""unauthorized person"" within the meaning of

Administrative Evacuee Property Act of 2006 may be declared violative of Article 14, 19 and 21 of the Constitution of India.

ii. a mandamus commanding the State, if it claims it has forcibly dispossessed the petitioners through the agency of SHO, Nigeen to immediately hand back the possession to the petitioners.

iii. a mandamus commanding the Commissioner, Agrarian Reforms to invoke his powers under the Agrarian Reforms Act and to record a mutation

in favour of the petitioners under S.8 of the Agrarian Reforms Act of 1967 and not to make a discrimination between them and other cultivating

tenants only on the false plea that the property is an Evacuee Property.

iv. a direction by the Hon'ble High Court to Principal Secretary to Government, Revenue Department i.e respondent No.1 and Deputy

Commissioner Srinagar to produce the entire revenue record, Khasra, Girdawari's for the perusal of the Hon'ble High Court for finding out the status of the petitioners.

v. a direction to the Custodian, Evacuee Property to produce the entire record of 1947 in case he claims that a notice was issued to the interested

persons in consonance with the provisions of Evacuee Property Act, so that the Hon'ble Court is able to peruse the actual facts as per official

record. Petitioners also want to rely on official record which is in possession of the authorities.

vi. the Hon'ble High Court may keeping in view that human rights of the petitioners has been violated, mould the relief that would be suitable after a

detailed reply affidavit is filed by the respondents and official record produce explaining the averments made in this petition and taking an over all

view of the factual scenario mould the relief itself, if the petitioners have not claimed proper relief according to law.

vii. any other relief, which the Hon'ble Court may deem fit and proper in the present facts and circumstances of this case.

2. At para 6 of the writ petition six questions of law have been formulated by the applicants. The questions of law formulated inter alia state

whether Custodian can dispossess a person from evacuee property in violation of J&K Specific Relief Act; whether the alleged status of the

applicants as cultivating tenants of the evacuee property remains intact; whether the Custodian could exercise power U/s 7 and take possession of

the evacuee property; whether the provisions of Administration of evacuee property Act are violative of Constitution of India because Constitution

application order was made applicable to State of J&K in 1954; whether definition of unauthorized person is violative of provisions of Constitution

of India; whether the Administrative Evacuee Properties Act would affect the provisions of Agrarian Reforms Act of 1976. It is inter alia on these

pleadings the reliefs are sought from the court in the writ petition.

3. The respondents 5,6 and 7 have filed objections to the maintainability of the writ petition.

4. During pendency of the writ petition, the applicants filed above applications seeking amendment of the writ petition. On notice issued in these

applications respondent No.7 filed objections. The applicants in CMP No. 360/09

pray that they be permitted to amend the writ petition and to incorporate the ground as to whether the Custodian as a statutory authority under section 8 of the J&K Administration of Evacuee's Properties Act

2006, has judicial power to decide an issue or it is power vested in State only and cannot be delegated to a statutory authority.

5. Heard Id. counsel for parties. Considered the matter.

6. The Id counsel for the applicants Mr. S.T. Hussain submitted that proposed amendments will not change the nature of the proceedings and

proposed amendments are necessary for complete adjudication of the issues involved in the writ petition. Id. counsel referred to and relied upon,

2006 AIR (Civil) 360.

7. Mr. G.A. Lone Id. counsel for respondent No.7, however, vehemently opposed the amendment application. The Id. counsel submitted that the

application is malafide and has been filed only to give lease of life to the writ petition, which both in fact and law merits dismissal. The Id. counsel

referred to and relied upon the judgment of Supreme Court reported in AIR 1973 SC 2603, & AIR 1959 SC 942.

8. At paragraph 6 (iii) of the writ petition, the petitioner has specifically pleaded that provisions of the J&K Administration of Evacuee Properties

Act are violative of Article 19 of the Constitution of India. Further perusal of the writ petition, would reveal that the main thrust is on the jurisdiction

and the powers of the Custodian General which he derives from the Administration of Evacuee properties Act of 2006. The challenge having been

thrown to the vires of the Act itself, the independent challenge to Section 8 of the J&K Administration of Evacuee Administration Properties Act of

2006 by way of proposed amendment is nothing but attempt to protract the proceedings. The proposed amendment will not advance the cause of

justice but will only defeat the same. The proposed amendments are by and large already covered by pleadings of writ petition.

9. The application being meritless is accordingly dismissed. CMP No. 667/09

10. Through this application the applicants seek to amend the writ petition, by incorporating the ground that the J&K Administration of Evacuee

Properties Act could not be passed as no such power was vested in the Legislative body; and it is for this reason the vires of the entire Act is

called in question.

11. Another proposed amendment is that the provisions of Agrarian Reforms Act of 1976 have overriding effect on the J&K Administration of Evacuees Properties Act.

12. In the paragraph 6(iii) of the writ petition applicants have thrown challenge to the provisions of Administration of Evacuees Properties Act. The proposed amendment is almost replication of the same pleading. In para 7 of the writ petition, specific plea is taken that the Administration

Evacuee Properties Act would not affect the provisions of Agrarian Reforms Act. The proposed amendments cannot be allowed, as the necessary

pleadings are already contained in the writ petition.

13. This application, being merit less, deserves dismissal and is accordingly dismissed.

14. In view of urgency expressed, Registry to list the writ petition OWP No. 295/08 before appropriate bench in the next week. The matter be not treated as part heard.