

(1998) 08 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 588-AoH997

Mohammad Amin Khan

APPELLANT

Vs

Srinagar Municipality and Ors.

RESPONDENT

Date of Decision : 20-08-1998

Acts Referred:

Citation : (1999) KashLJ 766

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : Z.A.Qureshi, Syed Manzoor, Advocates appearing for the Parties

Judgement

The circumstances under which this petition came to be filed in this court are noticed.

Respondent Srinagar Municipality owns a shopping complex within the municipal limits of Srinagar. The shops located in this shopping complex

were put to auction. These were too given on lease. These were to be auctioned and offend to the persons offering highest bid money. This bid

money has been given the nomenclature of premium. Auction was conducted. Petitioner submits that he took part in the process of auction, but he

has not been allotted a shop.

As per petitioner, the Executive Officer of the Srinagar Municipality allotted shop No. 10 to him. Petitioner submits that he deposited a sum of Rs.

10,000/. This was the initial deposit. Later on a sum of Rs. 1, 50,000/ is also said to have been offered through cheque. This amount represents

50% of the premium. This premium

1. came to be fixed as per the petitioner in pursuance of his having successfully taken part in the auction. With a view to contend that an auction did

actually take place, the petitioner in placing reliance on letter, annexure P9. This letter was issued in favor of one Mohammad Akber Khan. It is

submitted that this Mohammad Akber Khan has been allotted a shop. In these circumstances, it is submitted that there is no justification on the part

of the respondent Municipality to not to give same treatment to the petitioner.

Respondent Municipality has taken a plea that no valid auction was conducted. It is accordingly submitted that no right came to vest in the

petitioner.

The question as to whether an auction was conducted and the further question as to whether Executive Officer of the Srinagar Municipality could

issue any letter of allotment in favour of the petitioner or any other person are examined. Before examining this aspect of the matter, it would be

pertinent to note that there is no elected body in existence. Srinagar Municipality is under supersession. Its affairs are being looked by an

Administrator appointed under section 260 of the J&K Municipal Act. A question arises as to whether the Executive Officer of the Municipality

was competent to deal with the property and issue any letter of allotment when the Municipality is under super session. This is required to be gone

into. Before doing so, provisions of Section 260 of the Act be noticed. Relevant provision reads as under:

260. Consequences of super session (1) When the Council is superseded under the preceding section, the following consequences shall ensue: a)

all powers and duties of the Council and Standing Committees may, until the Council is reconstituted, be exercised and performed by such person

as the Government may appoint in that behalf, and the person so appointed shall be called the Administrator of the Municipality;

b) All properties vested in the Council shall until the Council is reconstituted, vest in the Administrator in trust for the purposes of this Act.

6. A perusal of Section 260(1) (b) of the J&K Municipal Act indicates:

i) That when a Council is under super session, then all the properties come to vest in the Administrator; ii) It is the Administrator so appointed who

is to deal with the property. His character is that of a trustee.

7. If above be the position, then the Executive Officer of the Srinagar Municipality was not competent to deal with the property in question. Unless

and until file was put up before the Administrator of the Municipality and he had

sanctioned and approved the auction, the Executive Officer of the Municipality was not competent to pass any further order. This is the plain reading of Section 260 of the J&K Municipal Act. As the Executive Officer of the Municipality has acted of his own without making any reference to the Administrator of the Municipality, therefore, the petitioner cannot derive any benefit from any communication addressed to him by the Srinagar Municipality. In this regard it would be apt to refer to a decision of the Supreme Court in the case reported as *Hitkarni Sabha V. Jabelpur Municipals* AIR 1972 SC 2017. In the above case, the Municipal Corporation was under super session. Under the Madhya Pradesh Act, which was under consideration before the Supreme Court, one of the consequences of super session was that all the properties of the Corporation were to vest in the State Government during the period of super session. A lease was created by the Administrator. The Supreme Court of India was of the view that the lease created by the Administrator was no lease in the eyes of law.

The position in this case is similar. Here when the Srinagar Municipality came to be superseded, the property came to vest in the Administrator. It was the Administrator of the Municipality who was competent to deal with the same. As the Administrator of the Municipality at no stage approved the auction, therefore, any order passed by the Executive Officer of the Municipality would be no order in the eyes of law. In this situation, the petitioner cannot derive any benefit from the orders said to have been passed by the Executive Officer of the Srinagar Municipality.

This petition, as such, is found without merit and is dismissed.

It be seen that the income from the shopping complex should have been used for public purposes. Somehow or the other, this has not happened so far. Respondent Municipality shall now take steps and see to it that the property i.e. shopping complex is now put to auction in accordance with law. Let auction be conducted, as early as possible and in any case not later than three months from the date, copy of the order passed by this court along with the writ petition and annexure are made available to the Administrator of the Municipality.