

(2009) 11 J&K CK 0028

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 248 Of 2000

Mohammad Shafi Parra & Anr.

APPELLANT

Vs

State & Ors.

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Jammu and Kashmir Evacuees (Administration of Property) Rules, 2008 — Rule 13C

Citation : (2009) JKJ 301 Supp

Hon'ble Judges : J.P.Singh, J

Bench : Single Bench

Advocate : G.J.Bala, A.R.Bhat, Advocates appearing for the Parties

Judgement

1. The petitioners have filed this Writ Petition seeking issuance of Writ of mandamus commanding the respondents to lease out land measuring 17

Kanals 16 Marias comprised in Khasra Nos. 1190/265, 1192/265, 1196/266, 1199/267, 268 and 269 situated at Panthachowk, Srinagar, in their

favour for a period of 90 years and not to dispossess them there from.

2. The land in question is stated to have been leased out to the petitioners' Predecessors in interest, after whose death in the year 1992 and 2000,

the petitioners came in possession thereof.

3. Petitioners' claim to seek lease of 90 years and a Restraint direction against the respondents not to evict them from the land in question is based

on the solitary plea that they had the prior right to get the land on lease.

4. The claim, in a net shell, is thus based on petitioners' possession over the land.

5. The respondents have contested the petitioners' Writ Petition on the ground that they were still in arrears of rent and had not surrendered the

possession of the land over which they were in unauthorised occupation, in that, the land had been leased out to their predecessors only on two

occasions, for one year each and thereafter there was no extension of lease.

6. Provisions of the Jammu & Kashmir State Evacuees (Administration of Property Act) Svt. 2006 have been referred to urge that the petitioners

have no right to seek lease of the land in question.

7. I have considered the submissions of learned counsel for the parties and gone through the provisions of the Jammu & Kashmir State Evacuees

(Administration of Property Act) Svt. 2006 and the rules framed there under which were referred to by Mr. Bala at the time of the consideration of

the Petition.

8. In view of the case set up by the respondents Authorities under the Jammu & Kashmir State Evacuees (Administration of Property) Act, the

petitioners' Predecessors in interest had been allowed lease of Evacuee land only on two occasions which period expired in the year 1969 where

after the possession of the petitioners' Predecessors in interest became unauthorised. There being no further lease of land by the Evacuees

Department in favour of the petitioners or their Predecessors in interest, the possession of the petitioners over the land in their occupation is thus

admittedly unauthorised.

9. Lease of Evacuee land is governed by the provisions of Rule 13 of the Evacuee (Administration of Property) Rules Svt. 2008 in terms whereof

the Evacuee Property may be leased out by the Custodian in such manner and subject to such conditions as may be prescribed by the

Government. Rule 13C prescribes procedure which the Custodian is required to follow for lease of any Evacuee vacant land by putting the land

sought to be leased out, to open auction.

10. The Jammu & Kashmir State Evacuees (Administration of Property Act) Svt. 2006 and the Rules framed there under do not contemplate

grant of lease otherwise than in accordance with the provisions of the Act and the Rules framed there under.

11. In this view of the matter, the petitioners' plea for regularization of lease in their favour is not tenable additionally because they are in

unauthorised occupation of the Evacuee Land. The possession of the petitioners over the land in question being unauthorised, they are thus

required to be evicted for putting the land to auction for its lease in accordance with the rules, to persons entitled thereto under law.

12. The petitioners can not thus stall the process of putting the land in question to open auction for its lease in accordance with the rules, to perpetuate their illegal occupation over it.

13. For all what has been said above, no case for issuance of directions as sought for by the petitioners in their Writ Petition has been made out.

14. Petitioners' Writ Petition, found to be without any merit is, accordingly, dismissed.