
(2019) 04 J&K CK 0067

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1187 Of 2009, IA No. 01 Of 2019

Mohammad Yousuf Sopori

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Prevention Of Food Adulteration Act, 1954 — Section 24
Constitution Of India, 1950 — Article 14

Citation : (2019) 04 J&K CK 0067

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : M.M. Dar, N.H. Shah, N. A. Chashoo, Moomin Kha

Final Decision : Dismissed

Judgement

1. The petitioner has filed this writ petition fundamentally seeking a direction against the respondents to rehabilitate him by providing a shop in any of the shopping complexes constructed by the respondents in lieu of the tea stall he claims to have been running in the old Engineering Complex near Exhibition Ground which, according to him, had come under road widening.

2. The case of the petitioner is that he was running a tea stall at old Engineering Complex near Exhibition Road under a proper registration of the Srinagar Municipal Corporation for which he also held licenses issued by different authorities of the Government. It is averred that the petitioner was authorised by the respondents to hold, possess and occupy the shed/shop. However, the said shop came under road widening. The petitioner states to have approached the Divisional Commissioner, Kashmir, respondent no.2 herein, with a representation who referred it to the Chief Engineer, R&B, respondent no.3, for taking appropriate action on merits thereon. When no decision was taken on his representation, the petitioner states to have filed a civil suit wherein, according to the petitioner, an interim direction was passed by the court to consider his case for rehabilitation on humanitarian grounds. Consequent thereto, respondent

no.3, the Chief Engineer, R&B, wrote to respondent no.6, the Commissioner, Srinagar Municipality, to look into it. Respondent no.6 is said to have informed respondent no.3 that rehabilitation was not his job. It is averred in the petition that he withdrew the suit and, constrained by the inaction of the respondents, filed a writ petition, bearing OWP no.813 of 2006. It appears in that petition, the Court had passed an interim order dated 17.11.2006, directing the respondents to consider the case of the petitioner. When the respondents therein filed objections, they brought it on record of the Court that the claim of the petitioner had been considered by respondent no.3 and rejected in terms of order no.CE/PWD(R&B)K-161(LS) of 2009 dated 23.9.2009. Consequent thereto, the petitioner sought withdrawal of that writ petition with liberty to file a fresh writ petition. The petitioner has, accordingly, filed the present writ petition challenging the aforesaid order passed by the Chief Engineer and seeking a direction to direct the respondents to rehabilitate him.

3. It is the specific case of the petitioner that there is a policy of the Government to rehabilitate dislocated shopkeepers and Khokhawalas. In this regard, the petitioner has made specific reference to the case of respondents 7 to 9 who were holding business establishments at Cheap Market and were rehabilitated in the complex built at Cheap Market on the terms and conditions of such allotment. The petitioner has also referred to some displaced khokhawalas of Indira Gandhi Road with respect to whom, it is stated that rehabilitation process was initiated. The petitioner claims discrimination and violation of his fundamental rights under Article 14 of the Constitution.

4. Respondent no.6 in his reply-affidavit has denied that the petitioner was authorised to raise the Khokha on the State land or that he was authorised to hold and possess the same. It is stated that the petitioner had unauthorisedly raised the wooden Khokha and that any license or number plate issued to him would not clothe him with any legitimacy to occupy the State land. It is also stated that the Khoka was demolished by Works Department. Respondent no.6, in his reply, has further stated that the Cheap Market Shopping Complex at Hari Singh High Street, Srinagar, was meant for rehabilitation of the genuine members of Cheap Market Federation and that the Corporation allotted 116 shops in the Cheap Market Shopping Complex in favour of the genuine beneficiaries from amongst the members of the Cheap Market Federation pursuant to the decision dated 11.07.2011 of the High Court in OWP no.217/2007 titled Cheap Market Federation v State of J&K which was upheld by the Division Bench on appeal. Photocopies of the judgments have been placed on record with the reply affidavit as its annexures. It is further stated that the petitioner was neither a T. G. Rent holder of the erstwhile Srinagar Municipality or the present Corporation, nor was he figuring in the genuine beneficiaries of the Cheap Market Federation. Therefore, he was not similarly situated with the beneficiaries / members of the Cheap Market Federation, and, as such, he could not be considered for rehabilitation on the analogy of respondents 7 to 9 or, for that matter, other persons. It is also stated by respondent no.6 in the reply that

the Government has not formulated any scheme for rehabilitation of trespassers or occupants of State land. The petitioner had illegally and unauthorisedly raised a wooden Khokha in the premises of Engineering Complex which was demolished by the PWD(R&B) in connection with road widening programme and construction of flyover bridge, therefore, he is not entitled to any rehabilitation.

5. Respondents 3 to 5 in their separate reply affidavit have stated that the petitioner is not entitled to rehabilitation.

6. I heard learned counsel for the parties and considered the matter.

7. In order to succeed in the writ petition, the petitioner is required to establish two things: first, that he was an authorised occupant of the location; and second, that there was a scheme or policy of the Government to rehabilitate him or that he was similarly placed as those of the dislocated shopkeepers / Khokhawalas of the Cheap Market who had been rehabilitated by the respondents by allotment of shops.

8. In order to show that he was an authorised occupant of the location or that he had authorisedly constructed the Khokha within the premises of the old Engineering Complex, the petitioner has relied upon the registration certificate issued in his favour by the Department of Labour under the provisions of the Jammu and Kashmir Shops and Establishments Act, 1966 read with the Rules framed thereunder. The object of this Act is to provide for the regulation of the conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres, other places of public amusements or entertainments and other establishment. It does not even remotely deal with authorisation to occupy any location or pavement or State land to raise a shop/shed or Khokha for setting up of a business establishment. Reliance on the registration certificate, therefore, is inconsequential.

9. The other document relied upon by the petitioner is a license issued in his favour under Section 24 of the Prevention of Food Adulteration Act, 1954, by the Licensing Authority under the Act in the Srinagar Municipal Corporation, authorising him to sell/store/distribute or exhibit any article of food on the premises situated at Exhibition Road. This Act was enacted to make provisions for the prevention of adulteration of food. The license issued under the provisions of the Act and/or the Rules framed thereunder, again, does not relate to authorisation of occupying a location, space or State land for setting up an establishment for sale, storage, distribution or exhibition of an article of food. The third document is also of the very same nature.

10. The aforesaid document, at best, can be said to establish that the petitioner was running a tea stall at the location, but he has to show that he was authorisedly occupying the space. In order to establish that fact, the petitioner is required to show that there was an allotment order in his favour and that he had been paying rent for the space. There is nothing placed on record by the petitioner to establish this crucial aspect in the matter.

11. Next, the petitioner is required to show to the Court that there is a scheme or policy of the Government to rehabilitate persons like him or that he was similarly placed with those of the dislocated shopkeepers / Khokhawalas of the Cheap Market who had been rehabilitated by the respondents by allotment of shops. A perusal of the common judgment of the Court in OWP nos.422/2011 c/ w OWP nos. 217/2007 and 145/2008, decided on 11.07.2011, clearly mentions that the petitioners therein had been running their business premises in the Cheap Market, Hari Singh High Street, Srinagar, / near Exhibition Crossing on T. G. Rent basis, meaning thereby that they were authorisedly occupying the locations. The total number of such shopkeepers was 217 and had been assured construction of a complex and allotment of shops therein on self finance basis. The Federation constituted by the said shopkeepers through its office bearers had also named the 217 shopkeepers before the Court. In such circumstances, they have been rehabilitated in the complex constructed at the Cheap Market itself for them. Petitioner has neither been one of such shopkeepers, nor has he shown that he was authorisedly occupying the space in question. Therefore, he cannot equate himself with those shopkeepers or claim discrimination. The petitioner has thus failed to establish that there was any policy or scheme of the Government to rehabilitate him by providing him a shop.

12. It may be mentioned here that in order to support his case, the learned counsel for the petitioners sought to rely on the judgment of the Delhi High Court in a bunch of petitions, the lead case title being Sudama Singh v. Government of Delhi, decided on 11.02.2010. I have gone through this judgment. It is wholly distinguishable on facts inasmuch as the question involved therein related to shelter of the petitioners who were rendered homeless. Similarly, the other judgment in Ahmedabad Municipal Corporation v Nawab Khan Gulab Khan, (1997) 11 SCC 121, also related to pavement dwellers and involved the question of right to shelter and, therefore, is not attracted herein.

13. In light of the above facts and circumstances, I do not see any illegality committed by the respondent, Chief Engineer, in passing the impugned order dated 23.09.2009 or the stand taken by the Municipal Corporation, referred to therein.

14. This petition, therefore, merits dismissal and is hereby dismissed together with the connected IA. Interim direction, if any, subsisting as on date, shall stand vacated.

15. No order as to costs.