

(2009) 01 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 736 Of 2006

Mumtaz Ali Chakat

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 03-01-2009

Acts Referred:

Citation : (2009) 3 JKJ 474 : (2009) 2 KashLJ 111 : (2009) 1 SriLJ 190

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Advocate : S.H.Thakur, Advocates appearing for the Parties

Judgement

1. The petitioner seeks following reliefs in the writ petition:

1. One in the nature of Certiorari quashing the Government Order No. 275Est of 2006 dated 28.09.2006 to the extent it pertains to the petitioner

as unjust, illegal, violative of fundamental rights and principle of Natural Justice;

2. One in the nature of Mandamus commanding the respondents not to disturb the possession of the petitioner so far as it relates to quarter no.

153/L which is legally allotted to him vide order dated 29.11.1999;

3. One in the nature of Mandamus commanding the respondents not to evict the petitioner by forcefully means from the quarter no. 153/L at

Bemina Housing Colony Srinagar in grab of impugned order.

2. The case of the petitioner is that he is a government employee and is working as Draftsman in the Electric Planning and Design Department,

Srinagar Wing. His further case is that he is having no accommodation of his own in Srinagar city, accordingly, approached the respondents for

allotment of accommodation which was responded positively by the respondents and set no. 153/Bemina was allotted to him vide Government

Order no. 372/EST of 1999 dated 29.11.1999. Sanction was accorded to the allotment of above said set for a period of one year or till such time

the petitioner remains posted at Srinagar whichever is earlier on payment of rent as admissible under rules. Thereafter, vide order no. 275/EST of

2006 dated 28th of September 2006 the set which has allotted to the petitioner was allotted to one Ghulam MohiudDin, Sr. Assistant RDD. The

petitioner is aggrieved of this order and has challenged the same through this writ petition on the ground that he continues to be posted at Srinagar

and his children are still at Bemina, Srinagar. However, case of the petitioner is that after issuance of the order impugned in this petition he

represented to the respondents by filing application that in view of the fact situation given hereinabove, he should be allowed to continue to occupy

the allotted set. His further case is that he is possessing the quarter for the past seven years and his children are attending the school in the locality.

He has annexed school certificates of his children also with the writ petition to substantiate this fact. Respondents in their objections have stated

that the sanction was accorded to the allotment of Set no. 153/Bemina in favour of the period of one year or such time he remains posted at

Srinagar, whichever may be earlier. However, case of the respondents is that the allotment was not extended beyond a period of one year. It is

further submitted that the petitioner has raised a disputed question of fact. Respondents further submission is that beneficiary of the impugned order

i.e., Gh. MohiudDin has not been impleaded as party. The respondents further submitted that the cumulative effect of what has been stated in the

objections shall entail dismissal of the writ petition.

3. Heard learned counsel for the petitioner and considered the matter. The petitioner has been validly allotted Set no. 153/Bemina but the said

allotment was made only for a period of one year. The petitioner is continuously in possession of the said set from the year 1999. The petitioner

submits that he has paid the rent of the allotted Set upto 2008. Petitioner as claimed by him in the writ petition is not being paid any house rent

allowance. The petitioner was validly holding the possession of the quarter of the set allotted to him on 29th of November 1999 for a period of one

year alone. There being no extension in the allotment of the set the petitioner is not clothed with any right in law to seek quashment of the impugned

order. However, petitioner has procedural right vested in him which right disentitles the respondents to forcibly evict the petitioner from the allotted

set. The procedural right is a right guaranteed under Article 14 of the Constitution and any violation therein will infringe the rights guaranteed to the

petitioner under Article 14 of the Constitution. The respondents are duty bound to follow the procedure as established by law while initiating action

for eviction of the petitioner.

4. This writ petition is accordingly disposed of with direction to respondents that while initiating action for eviction of the petitioner they shall fully

adhere to the procedure as established by law. Till orders in accordance with law are passed for eviction of the petitioner status quo be

maintained.

5. Registry is directed to convey this order to respondents. Disposed of.