

(2023) 12 J&K CK 0073

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 818 Of 2016

Nazir Ahmad Shah

APPELLANT

Vs

State Of J&K & Ors

RESPONDENT

Date of Decision : 30-12-2023

Acts Referred:

Citation : (2023) 12 J&K CK 0073

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Jahangir Iqbal Ganai, Hisham Saleem, D. C. Raina, Sajad Ashraf, Mohsin Qadiri, Maha Majeed, T. M. Shamsi

Final Decision : Disposed Of

Judgement

Sanjay Dhar, J

1) The petitioner has challenged order No.2403 of 2015 dated 08.08.2015 to the extent of not granting occupation charges of the land belonging to the petitioner and respondent No.7 w.e.f. 15.04.2010 to 19.01.2015 as also to the extent of area of occupied land, which has been shown as 17 kanals 12 marlas instead of 25 kanals and 17½ marlas.

2) Briefly stated, the facts of the case which emanate from the pleadings of the parties are that the land comprised in Khasra Nos.2028/415, 2030/41, 2031/415, 2075/423, 2077/423, 2078/423, 2079/423, 2080/423, 2081/423, 413 and 414 in Estate Zainakote Tehsil Centre, Shalteng, Srinagar, along with structures raised thereon belonging to the petitioner and respondent No.7, came to be occupied by the Security Forces with effect from 27.11.2005. According to the petitioner, the total land that was occupied by the Security Forces is measuring 25 kanals and 17 marlas whereas stand of the official respondents is that only 20 kanals of land, out of the big chunk of land measuring 25 kanals and 17 marlas belonging to the petitioner and respondent No.7, was occupied by the Security Forces. There is also dispute as regard the date on which the Security

Forces vacated the property in question and handed over the possession thereof to the owners. According to the petitioner, the property in question remained in occupation of the official respondents until 19.01.2015 when certificate of handing over/taking over was executed by the petitioner, whereas the official respondents claim that the Security Forces vacated the property on 14.04.2010 and it was due to the reasons attributable to the petitioner that he did not take over possession of the property until 19.01.2015, therefore, they are liable to pay occupation charges/rent only upto 14.04.2010.

3) There is yet another relevant fact which is required to be noticed. The structures raised on the land in question are alleged to have been raised by the son of the petitioner, namely, Masood Ahmad Shah, which is being disputed by respondent No.7. Said Shri Masood Ahmad Shah had filed a writ petition bearing OWP No.184/2010 seeking a direction upon the official respondents to make assessment of the structures raised on the aforesaid land and to release the rent in his favour. The said writ petition came to be disposed of by a Division Bench of this Court in terms of order dated 03.07.2001 and it was provided that the rent deposited before the Registry on account of the occupational charges of these structures shall be released by the District Judge, Srinagar, after determining entitlement of the parties to receive the said amount. The area of land underneath these structures is stated to be 02 kanals 08 marlas.

4) The District Level Rent Assessment Committee in its meeting held on 20.01.2015 assessed the rent for the aforesaid land measuring 25 kanals and 17 marlas @Rs.14,538.50/ per month upto 15th February, 2008, in terms of SRO 325 dated 02.12.2005 and @Rs.72,690.20/ per month from 16th February, 2008, onwards in terms of existing on the land in question, which were in occupation of the Security Forces are concerned, the District Level Rent Assessment Committee, Srinagar, assessed the rent for the same @Rs.32,618/ per month in favour of Shri Masood Ahmad Shah, the son of the petitioner.

5) Pursuant to the aforesaid assessments made by the District Level Rent Assessment Committees, the Director General of Police issued sanction order No.2403 of 2015 dated 08.08.2015, whereby sanction was accorded to the grant of rent @Rs.32,618/ per month for the structures with effect from 27.11.2005 to 14.04.2010 and for grant of rent for the land measuring 17 kanals and 12 marlas (excluding land measuring 02 kanals 08 marlas underneath the structures belonging to the petitioner and respondent No.7) @Rs.6750/ per kanal per annum with effect from 27.11.2005 to 15.02.2008 and @Rs.33,750/ per kanal per annum with effect from 16.02.2008 to 14.04.2010.

6) According to the petitioner, the land that was occupied by the Security Forces was measuring 25 kanals and 17 marlas but by virtue of the impugned order, respondent No.3 has sanctioned rent only in respect of 17 kanals and 12 marlas. It is further case of the petitioner that while sanctioning the rent, the official respondents could not have excluded the land underneath the structures as the structures could not have been raised without there being any land. The other

grievance of the petitioner is that the sanction of rent has been confined to the period from 27.11.2005 to 14.04.2010 while as the property in question remained in occupation of the official respondents upto 19.01.2015 which is evident from the certificate of handing/taking over executed by the petitioner and the officer of the concerned police station. It is being contended that the official respondents were obliged to sanction and release rent for the property in question upto 19.01.2015.

7) The official respondents, on the other hand, have contended that only 20 kanals of land from the total chunk of land owned by the petitioner and respondent No.7 on spot were occupied by the Security Forces, therefore, they are not obliged to pay rent in respect of the land which was not under the occupation of the Security Forces. It has been further contended that the structures and the land underneath the structures is one component and, as such, the petitioner cannot claim rent in respect of the structures as well as in respect of the land underneath the structures, once he has been paid the rent in respect of the structures.

8) I have heard learned counsel for parties and perused the record of the case including the record of OWP No.184/2010, the writ petition filed by son of the petitioner seeking sanction of rent in respect of the structures.

9) Three issues that arise for determination in this writ petition are as under:

(I) Whether the petitioner is entitled to occupational charges/rent beyond 14.04.2010;

(II) What was the actual area of land which was under the occupation of the Security Forces;

(III) Whether the petitioner is entitled to rent in respect of land measuring 02 kanals 08 marlas underneath the structures in addition to the rent already sanctioned in respect of the structures;

10) For determining issue No.(I), it is to be seen as to upto which period the property in question remained in the occupation of the Security Forces/official respondents. There is no dispute to the fact that the property in question was occupied by the Security Forces with effect from 27.11.2005. The dispute is as regards the date on which it was vacated by the Security Forces/it was handed over to the petitioner. According to the petitioner, the land in question remained in occupation of the official respondents upto 19.01.2015, which is evident from the certificate of handing/taking over of the same executed by the petitioner and a police officer of Police Station, Parimpora, Srinagar.

The certificate of handing/taking over has not been disputed by the official respondents and the petitioner has also relied upon the said document. As per this document, the land/property in question has been taken over by the petitioner on 19.01.2015.

11) However, respondent No.4 in his objections has taken a stand that the occupied premises was vacated by the Security Forces on 14.04.2010 and the owners of the property were repeatedly requested to take over the possession. In this regard, a copy of letter dated 17.04.2010 addressed by SHO, P/S Parimpora, Srinagar, to the petitioner has been placed on record. As per the said letter, the petitioner has been informed about vacation of the property by CRPF 44th BN and he has been informed to take over the property in question. Copy of Roznamcha dated 17.04.2010 of Police Station, Parimpora, has also been placed on record in which it has been recorded that the petitioner has refused to acknowledge the receipt of letter dated 17.04.2010. Respondents No.3 to 6 as also respondent No.2 have further relied upon communication dated 14th April, 2010, issued by Commandant 44th BN of CRPF, to Shri Masood Ahmad Shah, the son of the petitioner, whereby he has been informed about vacation of the property in question by the Security Forces and he has been requested to take over possession of the property. The official respondents have placed on record another communication dated 22.04.2010 addressed by Shri Masood Ahmad Shah to the Commandant 44th BN of CRPF, the contents whereof are reproduced as under:

With regard to the above referred communication, it is to inform you that the communication dated 14th of April, 2010 was received by the undersigned on 19.4.2010 by registered post under RIA No. 187 GPO.

That as per the aforesaid communication, it appears that, the Shah Farm has been vacated without there being any proper handing over and taking over of the possession which not only is illegal but also unwarranted under law in as much as the matter is subjudice before. Hon'ble High Court of J&K in case bearing OWP No. 184/2010 titled Masood Ahmad Shah versus State and others and your goodself is a party-respondent No. 6 to the writ petition and thereto is aware about the pendency of the writ petition and the orders passed by the Hon'ble Court in the matter from time to time. Moreso the possession of the premises was not handed over by the undersigned directly but the possession of the property was taken by SSP Srinagar and thereto the same was handed over to 160 Bn. CRPF initially and thereafter to 44 Bn. CRPF. The matter being subjudice before the Hon'ble High Court of J&K, there was no occasion for vacation of the premises and any damage caused to the property in view of your proposed action shall be at your own peril and for the undersigned shall be at liberty to claim appropriate damages in accordance with law.

You are, as such, requested to take note of the petition pending before the Hon'ble High Court and the orders passed in the matter and thereto ensure that the premises is occupied and guarded by the battalion.

12) From the aforesaid documents placed on record by the official respondents, particularly communication dated 22.04.2010 addressed by Masood Ahmad Shah, son of the petitioner, to the Commandant 44th BN CRPF, it is clear that the owners of the property in question were informed about vacation of the same by

the Security Forces and they were asked to take over possession of the property. As is clear from the afore-quoted letter, the owners of the property in question were reluctant to take over possession of the property on the ground of pendency of OWP No.184/2010 and orders passed therein.

13) The question that falls for determination is as to whether the owners of the property in question were justified in refusing to take over possession of the property on the plea of pendency of the writ petition bearing OWP No.184/2010 and the interim orders passed therein. If we have a look at the record of OWP No.184/2010, an order came to be passed on 11.03.2010 in the said writ petition restraining the State Authorities including Collector Land Acquisition, PWD, Srinagar, from demolishing the buildings existing on the land till such time rent is assessed in respect of the said buildings.

14) From the aforesaid facts, it appears that there was no justification for the land owners to refuse taking over possession of the property vacated by the Security Forces. Their only concern was that the rent in respect of the structures should be assessed before the same are demolished pursuant to acquisition of part of the land in question. By taking over possession of the property vacated by the Security Forces, there would not have been any contravention to order dated 11.03.2010 passed in OWP No.184/2010. In fact, by taking over possession of the land and the structures, the owners could have very well monitored implementation of order dated 11.03.2010 by ensuring that nobody demolishes their structures without assessment of rent. Therefore, the plea taken by the owners for not taking over possession of the vacated property was without any justification and, as such, the delay in taking over possession of the property in question is solely attributable to the owners of the property in question and not to the official respondents.

15) It is because of reluctance of the petitioner and other co-owners of the property to take over possession thereof that a number of communications inter se the official respondents came to be exchanged for ensuring that the property is taken over by the owners at the earliest. The petitioner cannot take advantage of these inter se communications of the official respondents in support of his submission that the official respondents were remiss in handing over possession of the property in question to him.

16) In fact, the petitioner has not rebutted the assertions made by the official respondents that despite having been asked to take over possession of the property in question, he failed to do so without any reason. No rejoinder affidavit has been filed by the petitioner to rebut these assertions of the official respondents nor the petitioner has placed anything on record to deny or dispute the existence and receipt of the communications on which the official respondents have placed reliance to show that the owners of the property in question were asked to take over possession of the property which they failed to do. Therefore, it can safely be stated that the property of the petitioner was occupied by the official respondents only upto 14.04.2010 and thereafter the

owners of the property failed to take over possession of the same without any plausible reason. Thus, the petitioner cannot claim rental charges in respect of the property in question beyond 14.04.2010.

17) There is yet another aspect of the matter which is required to be noticed. Mr. Masood Ahmad Shah, the son of the petitioner, has filed a suit for declaration and mandatory injunction before the Court of Additional District Judge, Srinagar, seeking a decree of declaration that he is entitled to receive the rent in continuity beyond the period of vacation of the buildings over the land in question by the Security Forces. In the said suit, Mr. Masood Ahmad Shah, the son of the petitioner, has admitted that he had received letter dated 14.04.2010 from Commandant 44th BN CRPF informing him about the vacation of the property in question which was replied by him in terms of letter dated 22.04.2010. While the petitioner's son is seeking the relief for assessment of rent in respect of the buildings raised on the land in question for the period beyond 14.04.2010, the petitioner has filed the instant writ petition almost for similar relief, may be in respect of the land only, without disclosing the fact relating to pendency of the suit filed by his son. Therefore, there appears to be multiplicity of proceedings resorted to by the petitioner and his son for virtually similar reliefs. On this ground also the claim of the petitioner for sanction of rent beyond 14.04.2010 is not tenable.

18) That takes us to issue No.(II) which relates to the actual area of land that was under occupation of the Security Forces. In this regard, the petitioner has placed strong reliance upon communication dated 11.04.2015 of Deputy Commissioner, Srinagar, whereby assessment of rent in respect of the land in question has been conveyed to respondent No.4. In the said communication, the area of land is shown as 25 kanals and 17 marlas. Reliance has also been placed upon communication dated 30.09.2006, addressed by respondent No.4 to the Inspector General of Police, Kashmir Zone, Srinagar, wherein it has been stated that the structures existing on the land in question are surrounded by a huge patch of open land which is not in full legitimate use of 160 BN CRPF but is in their occupation.

19) As against this, the handing/taking over certificate, on which heavy reliance has been placed by the petitioner, the area of land is shown as 20 kanals out of total land of 25 kanals and 12 marlas. Besides this, the occupation certificate issued by Commandant 44th BN CRPF mentions the area of land as 20 kanals. In communication dated 25.04.2007 addressed by respondent No.7 to respondent No.4, it has been clearly spelled out by the said respondent that land measuring 20 kanals has been occupied by 160 BN CRPF. Similar admission has been made by respondent No.7 in his claim petition before the Arbitrator in arbitration proceedings between him and the petitioner. A copy of the said claim petition forms part of record of OWP No.184/2010.

20) The aforesaid documents leave no manner of doubt that the land that was occupied by the Security Forces was measuring 20 kanals and not 25 kanals 17

marlas, as has been claimed by the petitioner. The area of land mentioned by the Deputy Commissioner, Srinagar, in his communication dated 11.04.2015 cannot be taken as evidence of the actual area that was occupied by the Security Forces. The Rent Assessment Committee has only to assess the rate of rent on the basis of various factors including location and kind of the land. The area of land for which the rent is actually to be paid has to be on the basis of the certificate of occupation issued by the occupants, which in the instant case is 44th BN CRPF. As per the certificate issued by the authority of the said battalion, the area of land in their occupation was 20 kanals and not 25 kanals and 17 marlas. Merely because there was additional land belonging to the petitioner adjacent to the land occupied by the Security Forces, does not mean that the official respondents are bound to pay rent to the petitioner in respect of the additional land. The claim of the petitioner for payment of rent for 25 kanals and 17 marlas is, therefore, not tenable.

21) So far as issue No.(iii), is concerned, the contention raised by the petitioner is that he is entitled to rent in respect of the land measuring 02 kanals and 8 marlas underneath the structures which has been excluded by the official respondents while sanctioning rent in his favour. It has been contended that the official respondents have sanctioned rent only in respect of the structures existing on the land in the question without taking into account the value of the land underneath these structures.

22) On the other hand, the official respondents have contended that a building along with the land underneath it constitutes a single component and, therefore, the two cannot be assessed for rent separately. It has been contended that once the rent in respect of the structures has been sanctioned, no rent can be sanctioned in respect of the land underneath the structures.

23) It is true that there cannot be any super-structure without the land underneath and the land on which building stands automatically comes underneath the super-structure. There can also be no quarrel with the proposition that the land and the building constitute one unit and the value of the entire unit has to be determined with all its advantages and potentialities. However, it is also a fact that while assessing the value of the building, value of the land underneath the super-structure has also to be taken into account, otherwise there can be a situation where rental value of a building located in an urban area would be the same as the rental value of a similar building located in a remote rural area. The location of the building with reference to the value of the land on which the building has been raised is an important factor to be taken into account while assessing the rental value of a building.

24) In the instant case, the official respondents have not placed on record the details on the basis of which they have assessed the rent in respect of the super-structure. In case the official respondents have, while assessing the rent for super-structure, taken into account the value of the land underneath the super-structure, then, of course, the petitioner cannot claim separate rent in respect of

the land underneath the super-structure but in case the same has not been done by the official respondents, the petitioner is surely entitled to claim rent in respect of the land which has come underneath the super-structure.

25) For the foregoing reasons, the writ petition is disposed of in terms of the following directions:

(i) The petitioner is held not entitled to payment of rent beyond 14.04.2010, the date when the Security Forces vacated the property in question.

(ii) The claim of the petitioner for sanction of rent in respect of land beyond 20 kanals is declined.

(iii) In case the value of the land underneath the super-structures has not been taken into account by the official respondents while assessing the rent in respect of the super-structures, the official respondents shall sanction rent for the land measuring 02 kanals 08 marlas underneath the structures in favour of the petitioner as per the rates already sanctioned.