

**(2013) 09 J&K CK 0004**

**In the Jammu And Kashmir High Court**

**Case No :** Others Writ Petition (OWP) No. 570 Of 2012 and I.A. No. 983 Of 2012

Nazir Ahmad Sofi

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 24-09-2013

**Acts Referred:**

**Citation :** (2014) 1 JKJ 718

**Hon'ble Judges :** Muzaffar Hussain Attar, J

**Bench :** Single Bench

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**Judgement**

Muzaffar Hussain Attar, J.—Petitioners instituted a Civil Original Suit for declaration and injunction on the plea that they were tenants of

respondent No. 5 (Sona-ul-Lah Malik), which suit is pending on the files of court of Judge Small Causes, Srinagar. The respondent No. 5 is

defendant in the said suit. Mr. A.R. Bhat, learned counsel for the private respondents submitted that respondents 6 to 8 have already been

impleaded as party-defendants in the said suit.

2. The Trial Court on 25th May, 2011 passed an interim order directing the official respondents not to disburse the amount of compensation of the

shops in favour of Sona-ul-Lah Malik, who is defendant No. 6 in the suit and respondent No. 5 in this petition.

3. Thereafter, the respondents 6 to 8 filed writ petition bearing OWP No. 439/2011 before this Court, which was disposed of by the Court

without issuance of notice to the other side. It is this order which is sought to be recalled in this writ petition on the ground that the petitioners being

interested persons having laid claim for payment of compensation in the capacity of being tenants of the shops and the Civil Court being in session

of the matter, the Order dated 21st September, 2011 passed in OWP No. 439/2011 is adversely affecting their legal rights.

4. Learned counsel for the petitioners submitted that the Judgment having been passed without issuance of notice and without impleading the

present petitioners as party respondents in OWP No. 439/2011, would require to be recalled. Learned counsel in this behalf referred to and relied

upon a Constitution Bench Judgment of the Hon'ble Supreme Court in case titled Shivdeo Singh and Others, appellant v. State of Punjab and

Others, respondents, reported in AIR 1963 SC, page 1909 and submitted that the order dated 21st September, 2011 passed in OWP No.

439/2011 deserves to be recalled.

5. Paragraph-8 of the aforementioned Judgment of Hon'ble Supreme Court is taken note of:

...The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which in effect, reviews his prior order. Learned counsel

contends that Art. 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order

of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Art. 226 of the Constitution to preclude a High Court from

exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and

palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the

proceeding, before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely

did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they

were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous

proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by

Khosla, J...

6. Learned counsel for the private respondents submitted that respondent No. 5 is, admittedly, the owner of the shops and respondents 6 to 8

were tenants of the shops. Learned counsel further submitted that the shop has

been demolished and the only issue, which remains to be determined, is apportionment of compensation. Learned counsel also submitted that the Civil Court is seized of the matter and he has no objection in case Order dated 21st September, 2013 passed by this Court is recalled and that writ petition is disposed of leaving the parties free to get their rights adjudicated upon by the Civil Court.

7. Admittedly, the issue of tenancy of the shops, which has become bone of contention between the petitioners and private respondents, is subject matter of civil suit. In the facts of this case, the Civil Court alone can decide as to which amongst the petitioners and respondents 6 to 8, was tenant of the shops. In the facts of this case the petitioners have been condemned unheard by not impleading them as party-respondents in OWP No. 439/2011. The principles of natural justice, which constitute soul of any judicial action, would require recalling of Order dated 21st September, 2011 passed in OWP No. 439/2011.

8. The Constitutional Courts are repository of rights of people. These courts are created to protect the legal rights of the citizens. Any order or Judgment of the Court, which adversely affects the legal rights of citizens, can be recalled even in subsequent writ petition, when that person was not party to lis and was condemned unheard.

9. For the above stated reasons and in view of the statement made at bar by learned counsel for the private respondents, this writ petition is disposed of in the following manner:

The Order dated 21st September, 2011 passed in OWP No. 439/2011 is recalled and set-aside.

OWP No. 439/2011

This writ petition at request of Mr. A.R. Bhat learned Advocate is taken on Board and is disposed of, leaving the parties free to get their rights adjudicated upon by the Civil Court.