
(2021) 02 J&K CK 0082

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 228 Of 2021, CM No. 842 Of 2021

Nil Kanth Kaw And Others

APPELLANT

Vs

Ut Of Jk And Others

RESPONDENT

Date of Decision : 16-02-2021

Acts Referred:

Citation : (2021) 02 J&K CK 0082

Hon'ble Judges : VINOD CHATTERJI KOUL, J

Bench : Single Bench

Advocate : I. Sofi, B. A. Dar, T. M. Shamsi

Final Decision : Disposed Of

Judgement

1. Case of the petitioners is that in the year 1990, BSF personnel occupied their residential house, and since then they are in occupation. Respondents

fixed the rent for the use and occupation of the same in the year 1998 as per the Rent Assessment Schedule 1991. The rent assessment schedules

have been revised in 1998, 2003, 2009 and 2013, 2018. Despite requests, the respondents have not revised the rent vis a vis the aforesaid properties.

2. Learned counsel for the petitioners submits that the petitioner no. 1 and his brother late Bal Ji Kaw owned and possessed two separate two storied

residential houses with attic, along with land beneath and appurtenant thereto, at Khirman Hanood, Handwara, where they were residing. In

1989/1990, petitioner no. 1 and his aforesaid brother, with their families migrated from valley. Taking advantage of the said absence of the

petitioners/owners, the respondent Security forces (BSF) occupied aforesaid properties of the petitioners/owners forcibly.

3. It is further submitted that Balji Kaw died a few years back and the petitioners

2 and 3 are his legal heirs who inherited his property. The said property continues to be in the occupation of the Security forces as is evident from the letter dated 09.11.2018 of Sr. Superintendent of Police, Kupwara.

4. After occupying the aforesaid property, the respondents decided to pay the rent for the use and occupation of the properties by security forces/paramilitary forces etc. The respondents accordingly directed the respondent no. 5 to assess the rent for the use and occupation of the aforesaid residential houses etc of petitioners and assess the rent at Rs. 1229/- and Rs. 1138/- per month in favour of the petitioner no. 1 and Late Balji Kaw, the husband of petitioner no. 2 and father of petitioner no. 3 respectively. Respondent no. 5, accordingly, communicated the same to Tehsildar, Handwara. The said assessment was made by respondent no. 5 as per 1991 Rent Assessment Schedule.

5. Learned counsel for the petitioners has submitted that despite the assessment made by the respondents, the same was not paid to the petitioners/owners of the aforesaid properties.

6. The petitioners also represented before the respondents to revise the rent in terms of the said Schedule of 1998, 2003, but the respondents did not consider the said request of the petitioners/owners of the said properties. Subsequently, the respondents revised the said rent schedule in 2009 and 2013. The petitioners again approached the respondents to fix the rent as per the Rent Assessment Schedules revised from time to time but the respondents did not give any heed to the said request of the petitioners and the respondents continue to pay to the petitioners/owners of the aforesaid properties the rent as per the Schedule 1991, as assessed in 1997.

7. It is contended that petitioners vide application dated 18.9.2018 approached the respondent no. 4 for enhancement of the rent as per the revised rent. The respondent no. 4 endorsed the said representation to Sr. Superintendent of Police, Kupwara, for necessary action. The Sr. Superintendent of

Police sought the report from SDPO, Handwara, who submitted its report. The Superintendent of Police submitted the same to the respondent no. 4

vide letter dated 09.11.2018. The Addl. Deputy Commissioner, Kupwara, thereafter took up the matter with Addl. Deputy Commissioner Handwara

vide letter dated 19.12.2018 with direction to settle the matter. The Addl. Deputy Commissioner, sought report from the concerned Tehsildar,

Handwara, and subordinate authorities, who also submitted their respective reports and confirmed that the said properties are under occupation of security forces since 1990.

8. Respondent no. 4 is said to have taken up the matter with Joint Director, Planning, Kupwara, who vide letter dated 19.10.2019 took up the matter

with the respondent no. 5 but till date the respondents have not been revised the rent fixed by the respondents-State from time to time in terms of the

aforesaid revised schedules and the respondents continue to pay the rent @ Rs. 1220/- and Rs. 1138/- per month only respectively as fixed in 1998 in

terms of 1991 Rent Assessment Schedule.

9. Heard learned counsel for the parties.

10. With the consent of learned counsel for the parties, writ petition is disposed of, at this stage, by directing the petitioners to file a fresh

representation before the respondents. Respondents on its receipt shall consider and decide the same within a period of four weeks and if it is found

that the petitioners are entitled to any revised rent, same shall be released in their favour from the date copy of the representation along with the writ

petition and order of this Court are served upon the them.

11. Copy of this order be provided to Mr. B. A. Dar, Sr. AAG and Mr. T. M. Shamsi, ASGI for onward transmission to the concerned respondents

for necessary action at their end.

12. Disposed of along with connected CM(s).