
(2010) 03 J&K CK 0032

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous Petition No. 781/2010 CIMA No.74 Of 2006

Om Parkash

APPELLANT

Vs

Manohar Singh & ors.

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Citation : (2010) 03 J&K CK 0032

Hon'ble Judges : J.P.Singh, J

Bench : Single Bench

Advocate : P. S. Chandel, R. K. Gupta, Advocates appearing for the Parties

Judgement

The petitioner Nos. 1 and 2 Kanya Lal Dassi and Gouri Shanker Dassi, and petitioner No.3 M.K.Dassi, left behind their two storied building with

attic and a single storied building with attic alongwith land appurtenant thereto respectively, at village Ganjwara of Tehsil Anantnag in District

AnantnagKashmir, when they had to migrate therefrom because of the militancy in Kashmir valley. Their houses and land were occupied by the

Security Forces (CRPF) in mid 1990's. Vide its decision No.120314/LRA/Rent/2002 dated 30.01.2002, the State Government assessed

Rs.3330/ and 904/ per month as rent payable for their houses respectively.

According to the petitioners, the State Authorities assessed rent payable for their houses alone and no rent was assessed for the land appurtenant

thereto, which too was occupied by the Security Forces. Rs. 46384/ is stated by the petitioners to have been received by petitioner Nos. 1 and 2

vide Draft No.97657 dated 08.02.2003 drawn on the Jammu and Kashmir Bank Limited, as part payment towards the rent of their houses.

Petitioner No.3 was not, however, paid anything towards the rent of his building

in occupation of the Security Forces.

Relying on the provisions of the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act,

1997, the petitioners seek directions against the respondents to free their residential houses from the unauthorized occupation and pay them

compensation for the unauthorized occupation's period at the rate double the market rate of rent. Compensation for the damage caused to their

properties by the Security Forces too is claimed in the Writ Petition.

The Deputy Commissioner, Anantnag's response to the petitioners' Notice dated 12.06.2002 for payment of rent is relied upon by the petitioners

to support the case set up in the Writ Petition. A copy of the communication has been placed on records.

Despite availing numerous opportunities, allowed to them to file Objections to the Writ Petition, the State respondents have opted not to file their

Response thereto. I have heard learned counsel for the parties and considered their submissions. On facts, there does not appear any dispute on

the question that the properties of the petitioners, who are migrants, have been taken possession of by the Security Forces. From the admission of

petitioner Nos.1 and 2, it comes out that they had received part payment of the rent, which had been assessed payable for their houses in

occupation of the Security Forces. The case set up by the petitioners' and the submissions of the learned State counsel are, therefore, dealt with in

view of the above factual position. In terms of the provisions of Section 4 of the Jammu and Kashmir Migrant Immovable Property (Preservation,

Protection and Restraint on Distress Sales) Act, 1997, "the Act" hereafter, the District Magistrate, Anantnag is deemed to have taken over the

possession of the properties of the petitioners. He was required to take requisite steps on the petitioners' Complaint regarding illegal occupation of

their premises, as contemplated by the provisions of Section 5 of the Act.

Looking to the facts and circumstances of the case as they so appear from the material placed on the records by the petitioners claiming them to

have received rent in part for the premises in occupation of the Security Forces, their Claim for freeing their properties from the occupation of the

Security Forces needs to be determined first by the Competent Authority under the Act, in that, it is the Authority which is empowered to go into

all these questions as to whether or not the possession of the Security Forces was unauthorized, and if so, to take requisite action for eviction of

the properties in their occupation, And it is only after coming to the conclusion that the migrants' property was in unauthorized occupation that issue

of payment of compensation may be determined.

As the District Magistrate has not yet considered the petitioners' grievance for initiating action under Sections 5 and 13 of the Act, so a direction

needs to be issued to him to discharge his statutory obligations under the Act This Writ Petition is, therefore, disposed of with a direction to the

District Magistrate, Anantnag to consider the petitioners' Claim for taking appropriate action in terms of the provisions of Sections 5 and 13 of the

Act in respect of their properties, and to take all such measures, as may be necessary, to implement the provisions of the Act. Until such

proceedings were initiated and concluded by the District Magistrate, he is required to ensure that the rent as assessed for the petitioners' buildings,

along with arrears, was paid to the petitioners, within a period of eight weeks. The State functionaries shall ensure payment of arrears of rent to the

petitioners within period referred to herein above.

The rent so paid and already received by the petitioners, shall be adjusted in the compensation, if assessed payable to the petitioners, in terms of

the provisions of Section 13 of the Act. The District Magistrate is directed to pass requisite orders in respect of the petitioners' claims, within a

period of four months, after hearing the respondents and those in occupation of the premises. The petitioners shall enjoy liberty to file fresh

Representation with the District Magistrate supplying him all such material or evidence on which they may like to rely upon to seek consideration of

their Claims.