

(2023) 02 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 672 Of 1998

P. N. Sharma (Deceased)

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 09-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 21, 32

Cantonment Act, 1924 — Section 200

Public Premises (Eviction Of Un-Authorized Occupants) Act, 1971 — Section 2(e)(viii),
4

Citation : (2023) 02 J&K CK 0007

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : R. A. Jan, Taha Khaleel, Shagufta Maqbool, T. M. Shamsi, Shahbaz Sikander

Final Decision : Disposed Of

Judgement

Sanjay Dhar, J

1. The petitioner has filed the instant writ petition seeking a declaration that his eviction from the shop-cum-residential premises bearing No. 5 situated at Saddar Bazar, Badami Bagh Cantonment, Srinagar is illegal, arbitrary and violative of constitutional guarantees. A further direction asking the respondents to restore the aforesaid premises to the petitioner has also been sought. Several other reliefs have also been prayed for in the writ petition including the one regarding lodging of FIR against the responsible persons for committing criminal trespass.

2. It is pertinent to mention here that during the pendency of the petition, the petitioner passed away and his legal heirs were brought on record in terms of order dated 12.12.2007 passed by this Court.

3. As per the case of the petitioner, he was allotted shop-cum-residential

premises bearing No. 5 by the respondent-cantonment board and he was enjoying the use and occupation of the said premises for about five decades on the mutually agreed terms and conditions including payment of rental etc. It is averred in the petition that the petitioner alongwith his family has been residing in the said premises and carrying on trade and business from there. It is also averred that the petitioner has been paying rentals as per the agreed terms.

4. According to the petitioner, due to his failing health, he executed attorney in favour of his sons, namely, Mr. V. K.Sharma and Mr. Vijay Sharma for the purpose of running the business from the premises in question. It has been stated that when respondent No. 4 took over as Executive Officer of the Cantonment Board, he unilaterally enhanced the rentals by 150% to 600%. This was protested by the Traders and Merchants Association, Saddar Bazar, Badami Bagh Cantt. Srinagar through its President, Vijay Sharma, who happens to be the son of the petitioner and writ petition bearing OWP No. 1129/1997 came to be filed by the association. It is alleged that even after passing of a status quo order by this Court, respondent No. 4 persisted with the coercive measures against the members of the association including the petitioner.

5. It is further alleged that after the onset of militancy, when for security reasons, entry/security passes became mandatory, respondent No. 4 resorted to withholding of renewal of security passes so as to force the members of the association to deposit the rentals at the enhanced rates despite order of status quo passed by the this Court. Even the supply of the electric energy to the entire area constituting Saddar Bazar market, B. B. Cantt, Srinagar was disconnected.

6. The above actions of the respondents are stated to have compelled the members of the market association to file another writ petition bearing OWP No. 44/1998 before this Court, in which certain directions were issued to the respondent No. 4 for completing the process of renewal of security/entry passes within a week's time. The said order, according to the petitioner, was not complied with by respondent No. 4, as a result of which, a contempt petition was filed before this Court. It has been further submitted that because of withholding renewal of security/entry passes by respondent No. 4, the entry and exit of the petitioner and his family members to their premises located at B. B. Cantt. Srinagar became difficult.

7. On 08.05.1998 and 25.08.1998, notices are stated to have been issued by the respondent No. 4 to the petitioner to appear in person for renewal of the licence but because of non-availability of the security pass to the attorney holder of the petitioner, the same could not be done and according to the petitioner, difficulty in this regard was communicated to the respondent No. 4 vide communications dated 12.05.1998, 18.05.1998 and 26.05.1998. It has been alleged by the petitioner that in the wee hours of 26.12.1998, the respondent Nos. 5 and 6 acting under the direction of respondent No. 3 & 4 trespassed in the premises No. 5, B. B. Cantt, Saddar Bazar, Sringar that was in the possession of the petitioner. According to the petitioner, this was done by the respondents by use

of physical force and by dragging the petitioner and his family members from the allotted premises. It has been further alleged that the respondents plundered all the belongings and valuable articles of the petitioner and his family without observing due course of law.

8. Reply on behalf of the respondents has been filed, in which they have resisted the petition. According to the respondents, the petitioner like other shopkeepers of Saddar Bazar, B. B. Cantt. Srinagar was granted licence for carrying out trade in terms of Section 200 of the Cantonment Act, 1924 on yearly basis on payment of licence fee determined by the Board from time to time. The respondents have denied that the premises allotted to the petitioner was residential-cum-commercial in nature. It has been submitted that that the petitioner could not have used the allotted premises for residential purpose without the specific permission of the Cantonment Board. It has been further submitted that the licence period of the petitioner came to an end on 31.03.1998 and he did not apply for grant of fresh licence.

9. The respondents have denied that the petitioner was in occupation of the premises for five decades. According to them, the licence to conduct the business in the allotted shop was granted in favour of the petitioner only for one year and it was renewed a number of times for short periods by the competent authority. It is averred that the petitioner did not apply for renewal of his licence beyond 31.03.1998 and as such, its renewal was not considered by the Board. It has been submitted that the petitioner has not been transacting business in the allotted premises for the last so many years as he has migrated from Srinagar about a decade back. It has been submitted that the petitioner intended to transfer the licence to third party on payment of premium, but the same was not allowed by the respondents. It has been submitted that it is within the competence of the respondent-Board to enhance the licence fee. The respondents have, however, denied that entry/security passes were refused to the member of the market association.

10. The respondents have denied that they have forcibly taken over the premises of the petitioner and it has been claimed that possession of the premises was taken over by the respondent without use of force after duly serving notice under rules upon the petitioner. It has been submitted that the petitioner was present in the premises at the relevant time and the possession of the premises was taken over in presence of the local Police officials on 26.10.1998 after serving proper notices upon the petitioner. It has been submitted that neither the petitioner nor his family was living in the premises at the time when its possession was taken over by the respondents, as such, no question of dragging the petitioner and his family out of the premises arises. It is also submitted that issues raised in the petition involve disputed questions of facts and as such, the same cannot be determined in writ jurisdiction.

11. Rejoinder affidavit has been filed by the petitioner, in which he has reiterated his earlier submissions.

12. It is also pertinent to mention here that in terms of orders dated 10.09.2007 and 17.02.2009, a Commissioner was appointed by this Court to visit the spot. This was done because at the time of eviction of the petitioner from the premises in question, certain articles, which belonged to him, were taken over by the authorities of the Cantonment Board. Accordingly, the Deputy Registrar Judicial, who was appointed as a Commissioner, visited the spot and submitted his report dated 30.03.2009. Another order came to be passed on 10.11.2022, whereby both the parties in presence of their counsels were directed to visit the place where the items catalogued by the Commissioner in his report dated 30.03.2009, were lying. A Joint inspection report in this regard was submitted before this Court on 25.11.2022.

13. I have heard learned counsel for the parties and perused the record of the case.

14. Certain admitted facts, which emerge from the pleadings and the record, are that the petitioner was allotted premises bearing No. 5 Sadar Bazar, Badami Bagh Cannt, , Srinagar on licence basis and the same was renewed from time to time. It is the admitted case of the parties that the licence was not renewed beyond 31.03.1998. Thus, according to the respondents, beyond the aforesaid period, the petitioner had no right to remain in possession of the premises, whereas the petitioner claims that he could not apply for renewal of licence as his entry to the premises was made impossible by the respondents.

15. Without going to the question as to who was responsible for non-renewal of licence, one thing is clear that up till March, 1998 the possession of the petitioner over the premises in question was legal in nature and once the licence was not renewed his status became that of an unauthorized occupant. For eviction of an unauthorized occupant from a public premises, a detailed procedure has been prescribed in the provision contained in Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (herein after to be referred as the 'Act of 1971'). As per section 2 (e) (viii) of "public premises" means any premises belonging to any Cantonment Board. Thus, the premises from which the petitioner was evicted qualifies to be Public Premises and for its vacation the procedure prescribed under the Act of 1971 had to be followed, which includes service of notice of eviction upon an unauthorized occupant in terms of section 4 of the Act of 1971.

16. The respondents claim that they had issued notices to the petitioner to vacate the premises but when he did not do so, they were left with no alternative but to take over the possession of the premises in presence of the local Police officials. It is not in dispute that provisions of the Act of 1971 are applicable to the premises in question and as such, it was incumbent upon the respondents to adopt the procedure provided under the said provisions for recovering the possession of the premises from the petitioner, who had become an unauthorized occupant after the expiry of period of his licence. The question arises whether any notice under section 4 of the Act of 1971 was served upon the petitioner by

the respondents before resorting to his eviction from the property in question.

17. In paragraph 19 of the objections, the respondents have submitted that possession of the premises was taken over after duly serving notices under rules and laws upon the petitioner. However, the respondents have not placed on record copies of the notices stated to have been served upon the petitioner prior effecting his eviction from the property in question. On 01.12.2022, learned counsel for the respondents had sought time to have instructions in the matter and to produce the relevant record for perusal of this Court. However, on the next date, learned counsel for the respondents submitted that the record relating to the eviction notices is not available with the office as the same has been damaged in the floods of September, 2014.

18. From the above, it is clear that the respondents do not have any record to support their contention that they have served any notice upon the petitioner before effecting his eviction from the premises in question. The action of the respondent, therefore, has no sanction of law. The petitioner has been evicted from the public premises without following the due course of law as prescribed under the provisions contained in the Act of 1971. Since the respondents have not resorted to the procedure established by law, as such, their action of evicting the petitioner from the premises in question, has been rendered unconstitutional and illegal.

19. Since much water has flown down river Jhelum after the impugned action of the respondents, at this point in time, it may not be feasible to issue a direction to the respondents to restore the possession of the premises to the petitioner as by now the premises may have changed several hands and third party interests may be involved. Even otherwise the petitioner has expired during pendency of writ petition, as such, nobody on his behalf may be interested in recovering the possession of the premises in question after expiry of so many years. Therefore, the relief regarding restoration of the possession as has been sought by the petitioner in the writ petition at this stage has been rendered impractical.

20. The question arises as to what relief can be granted to the petitioner in the circumstances of the case when it has been established that the action of the respondents has no sanction of law. Learned counsel for the petitioner has submitted that once it is shown that action of the respondents was illegal, the petitioner is entitled to compensation. To test the merits of this contention, it would be apt to refer the case law on subject.

21. In *Rudul Shah v. State of Bihar & Anr.*, (1983) 4 SCC 141, the Supreme Court was faced with a situation, where the petitioner, who was acquitted by the Court was released from the jail after more than 14 years. The petitioner approached the Court asking for his release on the ground that his detention was illegal and claimed compensation for his illegal incarceration. The Supreme Court while awarding compensation in favour of the petitioner in the said case has observed as under:

"9. It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a Court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over 14 years after his acquittal in a full-dressed trial. He filed a habeas corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this habeas corpus petition itself.

10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

54. The order of compensation passed was in the nature of a palliative, leaving the petitioner the liberty to file a suit for compensation, wherein the nice points

of facts and law could be adjudicated upon.

22. In the cases of Smt Nilabati Behera vs. State of Orissa and ors. (1993) 2 SCC 746, Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Ors. v. Sukamani Das (Smt.) and Anr., (1999) 7 SCC 298, Tamil Nadu Electricity Board v. Sumathi and Ors., (2000) 4 SCC 543 and S.P.S Rathore vs. State of Haryana, (2005) 10 SCC 1, a similar question has been dealt with extensively and it has been consistently held by the Supreme Court that a writ court is empowered to grant compensation where the action of the State Authorities is found to be patently illegal and unconstitutional.

23. From the analysis of the case law on the subject, the position that emerges is that the writ court has power to award compensation in appropriate cases, where the facts are not in dispute. If it established that the action of the public authorities is patently illegal and un-constitutional, which has resulted in deprivation of the fundamental right of the petitioner or his legal representatives, the petitioner cannot be asked to claim compensation by way of a suit and there is no bar for the writ court for entertaining and allowing the prayer for grant of compensation in such cases.

24. As has already been noted the action of the respondents in evicting the petitioner is illegal and unconstitutional in nature. Thus, as per the ratio laid down by the Supreme Court as has been discussed herein before, the petitioner is entitled to compensation from the respondents and the same can be granted by this Court in these proceedings. The next question that comes for consideration is that as to what should be the quantum of compensation.

25. As already noted that in terms of the order passed by this Court, a Commissioner was appointed to visit and inspect the spot where the shop of the petitioner was located. Accordingly, the Commissioner visited the spot and he found that the belongings of the petitioner had been kept in a shed adjacent to the office of Cantonment Board and admittedly, this was done by the officials of the respondents-Board. Upon opening of the shed in presence of the parties, the Commissioner found the following articles lying therein:

01- Different kinds of stationery items which include Registers, Type papers, Note Books, File covers, Computer Papers, Books, Greeting Cards, Army Standing Forms, Gum bottles etc. etc. Some of these items were kept in twenty three gunni bags that were taken outside the garage for inspection purpose and some items, which could not be taken up, were scattered all over the ground inside the garage. These items were lying on the ground inside the garage. There was dampness on the ground inside the shed as a result of which all these stationery items had got decayed and have thus lost their utility.

02- 02- Walnut Satty Set (three pieces), with broken legs but repairable and could be made serviceable.

03- Portable typewriter completely damaged and un-serviceable.

- 04- Central table completely damaged as such un-serviceable.
- 05- Television trolley completely damaged and of no use.
- 06- Sofa set (three pieces) completely damaged and of no use.
- 07- Two chairs completely damaged and unserviceable.
- 08- Table, which can be repaired and made serviceable.
- 09- Tin Box No. 1 (Trunk) of the dimension of 2' 9" in length, in breadth and 1' 9" in height. This trunk was locked and lock was sealed, however, the trunk was apparently serviceable.
- 10- Tin Box No.2 (Trunk), of the dimension of 3' 0" in length, 1' 00" in breadth and 1' 00" in height which was locked with bottom side damaged.
- 11- Tin Box no.3 (Trunk) of the dimension of 3' 0" in length, 1' 3" in breadth and 1' 00" in height. This trunk was also locked and lock was sealed but joint of its hook was broken.
- 12- Tin Box no.4 (Trunk) of the dimension 3' 00" in length, 1' in breadth and 1' in height. This trunk also was locked but apparently serviceable.
- 13- Tin Box No. 5 (Trunk) of the dimension 3' 00 in length, 1' 3" in breadth and 1' 00 in height. Same was locked and its lock was sealed, but apparently serviceable.
- 14- Tin Box no.6 (Trunk) of the dimension of 2' in length, 1' 3" in breadth and 1' in height. This trunk was not locked and was containing some clothes. Its condition was good and serviceable.
- 15- Tin Box No. 7 (Trunk) of the dimension of 2' in length, 1' 3" in breadth and 1' in height. This trunk was locked and its condition was good and as such serviceable.
- 16- Tin Box no.8 (Trunk) of the dimension of 2' 6" in length 1' 5" in breadth and 1' in height. It was also locked and lock was sealed, its condition was good as such serviceable.
- 17- Tin Box no.9 (Trunk) of the dimension of 2' 9" in length, 1' 6" in breadth and 1' in height, locked and its bottom side was damaged.
- 18- One BPL Television of 21" in size with one remote control. This television and its remote control can be made serviceable after effecting necessary repairs.
- 19- One VIP attaché having mark SAW-79. One of its lock was open and other one was opened in our presence with the help of a key. The key was with one of the petitioner. This attaché was containing ten ladies suits, sweater, Sari, one Shawl, two dupatta and a small purse. This purse was opened and it was containing cash of Rs.3870/- The currency notes were of following denominations & Numbers:

Five Hundred rupee notes seven in number and their numbers were:

1-5AW-799844

2-3 BA-027074

3-5AW-782480

4-5AW-78248 I

5-5AW-799230

6-5AW-783241

7-5AW-789995 500x7 = Rs.3500/

One hundred rupee notes two in number and their number were:

9VC -319622

6ER-621275 100x2 = Rs. 200/-

Fifty rupees notes three in number and their numbers were; -

1-2EH-443505

2-5EC-671214

3-7ST-026184 50x3 =Rs. 150/-

Ten Rupees note two in number and their numbers were: -

1 -J U E-840787

2-OOP-855732 10x2 =Rs 20/-

This purse was also containing one ring, one bangle, and one pair of earrings. All these ornaments seem to be of gold. It was also containing a Moti Malla. Since all these items were valuable items, as such undersigned noted numbers of the currency notes and put signatures on each currency note and thereafter cash and ornaments were put in a yellow envelop which was properly wrapped and on this envelop undersigned put seven signatures. This envelop was kept in the same purse. This purse was put in the same briefcase alongwith other items. This brief case was locked and alongwith its keys was specially handed over to Store Keeper namely Ab. Rashid Pandit for keeping this attaché in his safe custody & in respect of which his statement has also been taken down which shall form part of this report. The ladies suits and other items put in this attaché are all serviceable.

20- One VIP ALFA briefcase that was containing kids clothes. Both brief case as well as the clothes contained in it are serviceable.

21- Another VIP ALFA briefcase, which was locked, apparently serviceable.

22- One Table fan, which can be repaired and made functional,

- 23- Wooden bench, in good condition & thus, serviceable.
- 24- 24- One telephone apparatus of red color with Antenna. Both damaged and cannot be repaired.
- 25- One big cardboard box containing drawing pins. These pins are serviceable
- 26- One stabilizer (transformer) totally damaged and unserviceable.
- 27- Iron stool, which can be repaired and made serviceable.
- 28- Lamination machine, three in number, completely damaged and unserviceable.
- 29- Mask board fully damaged, as s such un-serviceable.
- 30- Video cassettes two in number, apparently in good condition but cannot be said serviceable or not.
- 31- One Philips refrigerator of 165 liters completely damaged, as such un-serviceable.
- 32- Refrigerators stand repairable.
- 33- Locker of medium size (green colour) it was locked but its bottom side was damaged.
- 34- JAKFED Gas cylinder, totally damaged and un-serviceable.
- 35- One Gas stove, in good condition and serviceable
- 36- Door mats three in number. All damaged and un- serviceable.
- 37- Retching desk, completely damaged and un- serviceable.
- 38- Quilts four in number, all these quilts are rotten completely damaged and unserviceable.
- 39- Mattresses four in number all rotten damaged and as such un- serviceable.
- 40- 40- Drugets, four in number, all rotten, completely damaged and unserviceable.
- 41- One Furshi sheet, rotten and unserviceable.
- 42- Pillows with crewel covers, six in number, completely damaged and unserviceable.
- 43- Sewing Machine of Merritt Make. This machine is in good condition and serviceable.
- 44- Jute mating two pieces completely damaged and of no use.
- 45- One Dari, completely damaged and of no use.
- 46- One Namda rotten, completely damaged and of no use.

- 47- Drawing rolls, five in number all completely damaged and of no use.
- 48- Talic sheet, one roll, damaged and of no utility.
- 49- Trace paper rolls, two in number, and of no use.
- 50- One bicycle. This bicycle can be made serviceable after effecting necessary repairs.
- 51- One Table clock, completely damaged and of no use.
- 52- Studio shade lights, three in number, completely damaged and of no utility.
- 53- Umbrella set (300 D) flash Unit, three in number completely damaged and unserviceable.
- 54- Camera stand, one in number, damaged but can be repaired and made serviceable.
- 55- One Enlarger, completely damaged and unserviceable.
- 56- Table lamp, damaged and unserviceable.
- 57- One Small pag table, completely damaged and unserviceable.
- 58- Two small beating drums (Doolki), one damaged and unserviceable, whereas other one was serviceable.
- 59- Two wooden beds, one 3? 6? in size and other 4 ½? x6 1/2? in size.

26. The Commissioner, it seems, has also recorded the statements of Abdul Rashid Pandit, Storekeeper of the Cantonment Board and Mr. Nazir Ahmed Bhat, Office Superintendent of the Cantonment Board. The gold ornaments and the cash were handed over by the Commissioner to Mr. Abdul Rashid Pandit.

27. Pursuant of order dated 10.11.2022, a joint inspection was conducted by the parties to ascertain the status of the aforesaid articles. The details as contained in the joint inspection report dated 25.11.2022 are given as under:

- "1- Two badly damaged trunks- one empty and another one locked
- 2. Brief Case- Completely damaged.
- 3. Sofas- Red Colour- Damaged.
- 4. Television Table- Damaged.
- 5. Bicycle- Damaged.
- 6. Photography enlarger-completely damaged. 7.Tripod- Damaged.
- 8. Two wood carving Tables- Damaged.

Items examined inside the structure:

- 1. Locker containing documents- Damaged.

2. Big Trunk- Containing Damaged clothes.

3. Large Sized 3 piece sofas- damaged.

4. Bed- Hung on the ceiling- Damaged.

5. Power kettle- Damaged.

6. Two laminating machines- damaged.

7. Wall Nut tables-damaged

8. Mattresses- Apparently new.

9. Reflector with Tripod- damaged.

3. The inside of the structure was entirely covered in dirt and mud because of the devastating floods of 2014. As per the information provided by the cantonment personnel the structure was completely submerged in water because of floods, and the water level in the area receded after a long period.

4. None of the items examined were found to be usable/serviceable.

5. Petitioner present in person said that the valuable possessions including jewelry were handed over to one Mr. Abdul Rashid store keeper in the year 2009 when the court appointed commissioner visited the structure in question.

6. That said valuable items could not be found during the inspection.

7. As per the information provided by the C.E.O, Cantonment Board, Mr. Abdul Rashid, was incharge of the structure till 31.08.2015, but there was no previous record shown to support the assertion for as claimed the floods of 2014 had destroyed every office record. Since then nobody has been assigned the charge of the said structure.

8. The whereabouts of the valuable inventory handed over to then in charge store-keeper remain clueless.

9. Photographs of the structure and the items examined are filed with the report."

28. From the aforesaid two reports, it is clear that a large number of articles which belonged to the petitioner and find mention in the report of the Commissioner are clearly missing in the joint inspection report. It is also revealed while most of the items that were found at the time of joint inspection were in damaged condition or not in serviceable condition, whereas the condition of these items at the time when the Commissioner visited the spot in the year, 2009 was better. The currency notes and items of jewellery that were handed over by the Commissioner to the Storekeeper of the Cantonment Board are also missing.

29. The respondents have filed compliance report dated 01.04.2022. In the said report, it has been submitted that letters dated 26.08.2006 and 28.09.2006 were

sent to the petitioner by the respondents directing him to collect the seized items within three days. However, he did not turn up to collect the same. It has been submitted that in the devastating floods of September, 2014, the office of the respondents remained submerged for 20 to 25 days and these items got damaged.

30. If we have a look at the copies of the notices issued by the respondents to the son of the petitioner, it is revealed that his address has been shown as a Tenant of Shop No. 5, Saddar Bazar B. B. Cantt, Srinagar, when admittedly the petitioner was thrown out from the said shop way back in the year, 1998. So, how the service of these notices was effected upon the petitioner or his son on an address where admittedly they were not residing, is beyond comprehension. Thus, it can safely be stated that the respondents even after forcibly taking over the possession of the premises in question did not even bother to inform the petitioner or his legal heirs to take custody of the articles that were lying in their office and instead they kept the same in a tin shed in a haphazard manner, as has been noted by the Commissioner in his report. By their acts and omissions, they have allowed the belongings of the petitioner to go waste and get damaged. The legal heirs of the petitioners are, therefore, entitled to compensation commensurate to the cost of the items that were found by the Commissioner at the time of his visit in the year 2009.

31. Having regard to nature of the items and their cost, it can safely be stated that the petitioner must have suffered lose approximately to the tune of Rs. 8.00 lacs.

32. Accordingly, while allowing the petitioner's prayer for grant of compensation, the respondents are directed to pay an amount of Rs. 10.00 lacs as compensation, which includes cost of the belongings of the petitioner taken over by the respondents and the damages on account of illegal action of the respondents. The compensation shall be payable by the respondent-Cantonment Board to the legal heirs of the petitioner within a period of two months from the date of this order, failing which it shall carry interest at the rate of 6% per annum from the date of this judgment till its realization.

33. Disposed of.