
(2000) 11 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : C. No. OWP 99/96

S.K.Clinics and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 20-11-2000

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)

Citation : (2001) KashLJ 161

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : S.Hali, H.Rehman, Anil Sharma, Advocates appearing for the Parties

Judgement

1. Admitted.

2. Petitioners were in possession of shops as lessees. This lease was valid upto 1994. The grievance of the petitioners is that they were dispossessed and this dispossession was contrary to law. It is urged that the possession should be restored in their favour or to the alternative they be given alternate sites.

3. The stand taken by respondents no. 2 and 3 is that the lease came to an end in the year 1994. Earlier to this the shops were gutted in fire. It is these circumstances submitted that the possession was taken from the petitioners. It is submitted that these shops were reconstructed and were reallocated.

4. The fact that the petitioners were in possession of shops in dispute as lessees is not being denied. Even if the shops were gutted in fire, the petitioners could have been evicted by following due procedure of law. If in the exercise of executive power, somebody is dispossessed, then that

would also not be in accordance with the law. The direct pronouncement of the Supreme Court on the point is reported as AIR 1961 SC1570,

Bishan Dass and Others Vs. State of Punjab and Others. In the above case, the predecessor of the petitioners who had moved the Supreme

Court. With the permission of the State on behalf of the joint family firm the predecessor had built a Dharamshala, a temple and shops on the land

belonging to the State and managed the same during his life time. The Dharamshala was built for the benefit of travelling public and the members of

the public offered wothership in the temple. After his death, the petitioners the other members of the joint family, continued the management but

subsequently the petitioners were dispossessed of the properties by an executive order passed by the SDO in pursuance of directions given by the

Deputy Commissioner and the management of the properties was placed in charge of the Municipal Committee. The petitioners filed a writ petition

under Article 32 of the Constitution challenging the action of the Government. On these facts, the Supreme Court held ""that the petitioners could

not be held to be trespassers in respect of dharamshala, temple and shops nor could it be held that the dharamshala, temple and shops belonged to

the State, irrespective of the question whether the trust created was of a public or private nature"". 5. It was further observed that:

The State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorities their

acts. The executive action taken in this case by the State and its officers was destructive of the basic principle of the rule of law"".

6. Ultimately, the conclusion arrived at was that :

The respondents had clearly violated the fundamental rights of the petitioners who were bonafide in possession by depriving them of the

possession of the properties by executive orders and therefore, the orders must be quashed and respondent must be restrained from interfering

with the petitioners in the management of those properties"".

7. In view of the law laid down by the Supreme Court, the petitioners are held entitled to the relief of restoration of property. If it is not possible to

hand over the possession of the same shops then alternate site and shops would be made available to them. Let this be done within a period of six

weeks from the date, a copy of this order is made available to the respondents

by the petitioners.

8. Disposed off as such.