

(2008) 09 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : OWP No.26/2001

Swami Hari Baket Chaitnaya & Anr.

APPELLANT

Vs

U.O.I.& Ors.

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Citation : (2009) 1 JKJ 416

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : V.R.Wazir, Pratibha Mahajan, Nirmal Kotwal, Advocates appearing for the Parties

Judgement

1. The petitioners are the owners of property known as Vishwayatan Yog Ashram situated at village Arli Hansali Tehsil Reasi where Yoga

Education is imparted by the petitioners. The respondent No.2 has occupied a part of buildings, halls and rooms in different blocks of different

dimensions and sizes duly furnished with modern facilities, including space and land appurtenant land thereto from May 1994. In addition to this,

they have pitched their tents on the portion of adjoining vacant land for providing shelter to the Jawans. The detailed description and dimensions of

the property in possession of the respondents have been described in the memo of the writ petition. The respondents have not paid any rent or

compensation for the use and occupation of the said property to which the petitioners are entitled and the respondents are bound to pay as per the

rates prescribed by the State.

2. The respondents in their reply affidavit did not deny the occupation of the property but their stand is that they are para military forces directly

under the control of the Central Government and have been deployed in the State of J&K at the request of State Government. It is the duty of the State Government to pay compensation to the petitioners and not of the Central Government.

3.1 have heard learned counsel for the parties.

4. Articles 19 and 31 of the Constitution have not been abrogated so far as State of J&K is concerned. State in exercise of its power of eminent

domain can acquire the property provided the compensation is paid to the owners. The petitioners as such are entitled to receive

rent/compensation for the use and occupation of the said property. What is compensation payable to the petitioners has already been determined

by the Additional Deputy Commissioner. This court vide its order dated 17.01.2001 directed the Collector (Addl. Deputy Commissioner)

Udhampur to hold an inquiry in the matter regarding the compensation/rent payable to the petitioners from May 1994 onwards. In pursuance of the

direction of the court, Additional Deputy Commissioner, Udhampur has submitted the detail report which form part of this writ petition. The said

report was submitted by the Additional Deputy Commissioner on 01.10.2001. In the said report, the Deputy Commissioner found that the

petitioners are entitled to receive a rent to the tune of Rs.20,68,928.00 lacs upto Sep. 2001. The petitioners are also entitled to the fixation of rent

from Sep. 2001 till the property remains in occupation of respondents. The only Around taken by the respondents is that it is the responsibility of

the State to pay the amount of compensation. They have relied upon the Division Bench judgment of this court in case titled Union of India and

others Vs. Mohammad Sultan Mir decided on 20.02.2002 in LPAHC No.130/2001

5. It is important to mention that State Government was impleaded as party vide order dated 08th June, 2007. Mr. B.S. Salathia appeared on

behalf of the newly added respondent. He was directed to file objections within four weeks. On 05.05.2008 this court granted last and final

opportunity to file objections failing which right to file the same shall stand closed. Despite this, objections have not been filed by the State.

6. In view of the above, this writ petition is allowed. I accordingly direct that the State Government should pay the compensation/rent as assessed

by the Addl. Deputy Commissioner, Udhampur to the petitioners within a period

of two months from the date of receipt of this order. State

Government is further directed to pay future rent also to the petitioners till the property is in the occupation of the respondents 1 to 3.

7. Disposed of along with CMP(s) if any.