

(2015) 10 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1306 Of 2015

Syeda Begum

APPELLANT

Vs

State of Jammu and Kashmir and Others

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Citation : (2015) 10 J&K CK 0007

Hon'ble Judges : N. Paul Vasantha Kumar, CJ;Tashi Rabstan, J

Bench : Division Bench

Advocate : A. Haqani, Advocate, for the Appellant; Tasaduq A. Khawaja, A.A.G., for the Respondent

Judgement

N. Paul Vasantha Kumar, C.J.

1. This writ petition is filed praying for issuing writ of mandamus directing the respondents to release the sanctioned ex-gratia amount of Rs.

75,000/- and other benefits as may be released under the Disaster Management Act and Rules framed there under in the face of flood which

submerged the petitioner's house at Ziyarat Batamalloo on 07.09.2014 by quashing the order dated 15.06.2015, recommending to reject the claim

of the petitioner on the ground that petitioner's house remained locked from prior to 1998 till date.

2. It is the specific case of the petitioner that she is permanent resident of J&K State and she is the owner and in actual physical possession of the

house bearing No. 128/3 Book No. 1083475, Ziyarat Batamalloo Srinagar which got fully damaged on 07.09.2014 due to unprecedented floods.

The house was submerged for over a period of two weeks. The said fact was verified by the SHO Police Station Batamalloo and certificate

bearing No. 112/FDR/2014 was issued on 19.10.2014. The house was also inspected by the Assistant Executive Engineer, Right City Sub

Division, Srinagar along with his team. It was reported after inspection that the ground floor of the residential house of the petitioner had

submerged and the load bearing interior walls and partition walls had developed multiple vertical cracks. The first floor of the house has partly

cracked. The said certificate was issued by the Executive Engineer, R&B Construction Division-II, Srinagar on 01.11.2014 declaring that the

petitioner's house is not safe for human habitation. It is the contention of the petitioner that based on the said assessment made by the officers of the

Government, a sum of Rs. 75000/- was approved to be disbursed to the petitioner at the first instance on, which was recommended to be

cancelled by order dated 15.06.2015 on the ground that petitioner was not residing in the said house.

3. The contention of the petitioner is that the compensation payable is for the damage caused to the house/houses and admittedly the house of the

petitioner was fully damaged which was also certified by the authorities of the Government, hence the ground that petitioner's house was not

occupied by the petitioner at the relevant time, is not correct. Even assuming it to be true, the said reason cannot be a valid reason to deny the

compensation as the house was fully damaged.

4. The respondents have filed the reply affidavit stating that recommendation to cancel the sanctioned amount was made only on the basis that the

building in question was non-residential and the petitioner having not resided in the said house which was affected due to floods, the order of

cancellation of relief is valid.

5. Reply affidavit was also filed by the petitioner stating that she was actually residing in the said house and for proving the same she is having the

Ration card issued under Book No. 1083475 for the year 2012-13 in the name of the petitioner's husband (since deceased) under House No.

128/3 for two members of the family by the Consumer Affairs and Public Distribution Department of the State Government and the

recommendations for cancelling the relief was made on imaginary reason that the petitioner was not residing in the said house, without conducting

local enquiry.

6. We have heard Mr. A. Haqani, learned counsel for the petitioner as well as Mr. Tasaduq H. Khawaja, learned AAG.

7. The point arises for consideration in this writ petition is as to whether the petitioner is entitled to get the ex-gratia relief of Rs. 75000/- due to the damage caused to her house because of floods which was already sanctioned.

8. It is an admitted fact that the petitioner is the owner of the said house and the house was fully damaged as certificate to that effect was issued by

the Executive Engineer, R&B Construction Division-II, Srinagar on 01.11.2014 stating that on examination of the structure it is not safe for any

habitation as there are multiple vertical cracks on load bearing walls interior walls and partition walls besides floor sunk and the first floor had partly

cracked.. It is also an admitted fact that as per the flood relief scheme the fully damaged houses are to be paid Rs. 75000/- as relief by the

Government as under the Scheme it is mentioned that for the damage of house/ houses a sum of Rs. 75000/- is payable to the owner. It is not

mentioned in the scheme that person concerned should be residing in the house. In the absence of any such prescription in the scheme, even

assuming that the petitioner was not residing in the said house for any reason, the respondents are not justified in not paying the relief of Rs.

75000/- for the fully damaged house of the petitioner. The narrow interpretation attempted to be given by the respondents cannot be accepted as

the scheme is framed intending to give the benefit to the persons who suffered damage to their houses due to unprecedented floods. Nowhere in

the scheme it is stated that the person should be actually residing in the house when the flood hit the house. Further it is the clear case of the

petitioner that she was residing in the said house and to prove the same she has produced the Ration card issued by the Consumer Affairs and

Public Distribution Department which is a primary evidence/official document to prove the residence of the petitioner. In such circumstances the

recommendation made by Tehsildar dated 15.06.2015 is contrary to the facts and the same is liable to be set aside.

9. Consequently the order dated 15.06.2015 is set aside with a direction to the 4th respondent to release the sanctioned amount of Rs. 75,000/- in

favour of the petitioner within a period of two weeks from the date of receipt of copy of this order.

10. No costs.