

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on :13.06.2023

Pronounced on:26.07.2023

OWP No.1564/2016

Vikram Chopra and anr.

.....**Petitioner(s)**

Through: Mr. Anil Bhan, Sr. Advocate with Mr.
Zahid Khan, Advocate.

versus

State of J&K & others

.....**Respondent(s)**

Through: Mr. Mohsin Qadri, Sr. AAG, with Mr.
Syed Musaib, Dy.A.G.
Mr. T.M. Shamsi, DSGI, with Mr.
Sahila Nisar, Advocate

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

JUDGMENT

(ANNOUNCED THROUGH VIRTUAL MODE FROM JAMMU WING)

1. Through the medium of this writ petition, the petitioners are seeking to quash Notice bearing No.75/ACN/AS/16 dated 10.11.2016 and Notice bearing No.ACN/296/PS/16 dated 15.12.2016 issued by Assistant Commissioner, Nazool, Srinagar, respondent No.5 herein, whereby the petitioners have been asked to show cause as to why they should not be evicted from the land measuring 31 kanals, 10 marlas, 26 sft. falling under Khasra Nos.45, 45/1, 46, situate at Sonwar, Srinagar, being in unauthorized occupation of the public premises in pursuance of Sub Section (1) of Section 4 of J&K Public Premises (Eviction of unauthorized occupants) Act, 1959 and 1988. The petitioners are also seeking a direction to the respondents not to dispossess or evict them from the subject matter, i.e., one acre each of Bungalow Nos.2 & 3 of Raghunath Villa and the land underneath and appurtenant situated at Gupkar Road, Srinagar.

2. The facts as gathered from the writ file are that the land-in-question was leased out to one Shri Ram Nath Chopra for a period of 40 years from 27.10.1907 to 26.10.1947 under the J&K Government Rules of 1905. After that Shri Ram Nath Chopra applied for extension of lease which was renewed for a period of 20 years in respect of four acres of land at a rent of Rs.345.76 with effect from 27.10.1947 to 26.10.1967. It is averred that in terms of Command Order No.273 dated 22.09.1939 of His Highness Maharaja Hari Singh, all the khalsa land within the Badami Bagh Cantonment area including the property-in-question popularly known as Raghunath Villa situated at Gupkar Road, Srinagar was transferred to the control of the Military Department, for which the Revenue (Nazool) Department also accorded no objection. Thus, the control over the property-in-question along with other khalsa lands within the Badami Bagh Cantonment came under the jurisdiction of cantonment authorities. Subsequently, it is averred that in terms of agreement dated 14.01.1956 entered into between the President of India and the State of J&K (now Union Territory) it was agreed upon between the parties that all the properties and assets pertaining to the J&K State Forces including the property-in-question, as they stood on 01.09.1949 shall vest to Union of India. Further, the respondents in Civil Appeal No.4326/1971 filed before the Apex Court had conceded and surrendered to the Union of India vis-à-vis ownership, titled and possession of the entire 56 kanals of land in and around Gupkar and Sonwar localities including the property-in-question. Thus, the orders passed by the Apex Court in Civil Appeal No.4326/1971 is binding upon the Nazool Department under Article 144 of the Constitution of India.

3. It is averred that the petitioners being the successors-in-interest of their predecessor, i.e., Ram Nath Chopra and S.N. Chopra, executed lease

agreement with the Defence Estates Officer in the year 1968 in respect of the subject matter, i.e., Raghunath Villa Nos.2 & 3 regarding rent, its revision etc. Thus, the said property-in-question has been in possession of the petitioners along with their families for the last more than hundred years and they have been using the same for residential purposes. They are also paying the rent, electricity charges, house tax etc. towards the cantonment board. It is submitted that despite the above legal position, the respondents through respondent No.5 have issued the impugned Notice No.75/ACN/AS/16 dated 10.11.2016 and Notice No.ACN/296/PS/16 dated 15.12.2016 asking them to show cause as to why the petitioners herein should not be evicted from the property-in-question being in unauthorized occupation of the same in pursuance of Sub Section (1) of Section 4 of J&K Public Premises (Eviction of unauthorized occupants) Act, 1959 and 1988. Hence, the present writ petition on behalf of petitioners herein.

4. Learned counsel appearing for petitioners argued that since for all practical purposes and for all times to come the khalsa land including the property-in-question within the Badami Bagh Cantonment area first transferred to the control of the Military Department by the then Maharaja Hari Singh in the year 1939 and, then, to the Union of India, i.e., Ministry of Defence by way of agreement arrived at between the State of Jammu & Kashmir and the President of India in the year 1956, therefore, the impugned notices are palpably wrong and legally misconceived and are required to be quashed and set aside. It is further argued that the Nazool Department has no right or claim over the property-in-question in view of this legal position and that the impugned notices have been issued without application of mind.

5. Learned counsel appearing for petitioners further argued that the mutation in respect of the land-in-question already stands effected into the revenue records and the said position persists till date, therefore, under these circumstances the impugned notices are nothing but a futile exercise unleashed by respondents No.5 and are required to be quashed.

6. Objections have been filed on behalf of respondents. In the objections filed on behalf of respondents 1 to 5 it is averred that as per the revenue record the property-in-question actually belongs to the Nazool Department. The command order issued by Maharaja Hari Singh during the year 1939 was for a specific purpose of watch and ward to the extent of its control, in fact, the ownership of property-in-question was never transferred to the Cantonment Board. The command order explains the “transfer to the control” not the “transfer of ownership rights.” It is further averred that nowhere in the agreement of 1956 entered into between the erstwhile State of Jammu & Kashmir and the Union of India on 14.01.1956, the Khalsa/Nazool land has been mentioned. Further, it is averred that paying of electric bills and house tax to any authority cannot give them right to claim the property.

7. Learned counsel appearing for respondents 1 to 5 argued that even if for the sake of argument we assume the land-in-question belongs to Cantonment, the lease of any land cannot be extended beyond 99 years unless the fresh application is entertained. In the present case the lease has expired in the year 2007 after having completing 99 years of perpetual lease. Therefore, the petitioners have no right over the property-in-question in any manner.

8. In the objections filed on behalf of respondent No.6, i.e., Defence Estates Officer, it is averred that the control over the leasehold properties

including the property-in-question along with other khalsa lands within the Badami Bagh Cantonment came under the jurisdiction of cantonment authorities as per command order dated 22.09.1939 issued by Maharaja Hari Singh and the same have been continuously under the control of the forces. Further, it is averred that in terms of agreement dated 14.01.1956 entered into between the President of India and the State of J&K (now Union Territory) it has been agreed upon between the parties that all the properties and assets pertaining to the J&K State Forces as they stood on 01.09.1949 shall vest to Union of India. It is averred that the land-in-question is defence land classified as B-3 placed under the management of Defence Officer which was leased out to one Shri Ram Nath Chopra for a period of 40 years from 27.10.1907 to 26.10.1947, thereafter, it was further renewed for a period of 20 years in respect of four acres of land at a rent of Rs.345.76 with effect from 27.10.1947 to 26.10.1967. However, the lease could not be renewed further and status-quo has been maintained for the present till the situation normalizes in the State in view of Ministry of Defence ID No.11041/3/83/D(Lands) Vol-II dated 10.05.1991. Now respondent No.6, i.e., Defence Estates Officer has taken up the matter with the higher authorities regarding renewal of lease, and requisite advice for further course of action is awaited.

9. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the writ file.

10. When the writ petition came to be filed, Defence Estates Officer was not a party to the petition. Accordingly, vide order dated 24.11.2022 Defence Estates Officer, Badamibagh Cantonment, Srinagar was impleaded as respondent No.6 to the writ petition.

11. Admittedly, respondents 1 to 5 have not disputed leasing out of the property-in-question by the Government of J&K in favour of one Shri Ram Nath Chopra for a period of 40 years from 27.10.1907 to 26.10.1947 under the J&K Government Rules of 1905. Respondents 1 to 5 have also not denied that the family of Ram Nath Chopra have been in possession of the said property for the last more than hundred years since the year 1907. Further, respondents 1 to 5 have also not disputed the issuance of command order No.273 dated 22.09.1939 by Maharaja Hari Singh; meaning thereby respondents 1 to 5 have admitted that vide the said command order of Maharaja Hari Singh several lots of khalsa land including the property-in-question within the Badamibagh Cantonment area came to be transferred to the control of the Military Department for which the Revenue Department of the State had also accorded no objection. Thus, respondents 1 to 5 have themselves admitted that since 22.09.1939 the khalsa land including the property-in-question have been under the control of the Military Department and the said position has not been altered till date. Once the said position has not been altered and the command order of Maharaja Hari Singh (supra) is still in existence, then how and under which capacity respondents 1 to 5, more particularly respondent No.5, could issue the impugned eviction notices, which is alien to law and the procedure adopted by respondents 1 to 5 is also bad in law. Further, a perusal of the command order dated 22.09.1939 reveals that it was an absolute transfer along with all rights over the land and possession of the same was also handed over to the Army or, in other words, disposing of the aforesaid land to the Army. Thus, the impugned eviction notices are factually and legally not sustainable.

12. Not only this, respondents 1 to 5 have also not denied the execution of agreement entered into between the President of India with the erstwhile State

of Jammu & Kashmir on 14.01.1956, whereby at sub-clause (a) it has been specifically provided that all the properties and assets pertaining to the Jammu and Kashmir State Forces, as they stood on 01.09.1949, shall vest in the Union. Admittedly, the khalsa land including the land-in-question was pertaining to the Army well before 01.09.1949 in terms of command order dated 22.09.1939. Therefore, in terms of agreement dated 14.01.1956 the said khalsa land including the land-in-question shall be deemed to have been vested in the Union of India for all practical purposes and respondents 1 to 5 have no right over the said property in any manner whatsoever. Even respondents 1 to 5 have not denied the paying of house tax, electricity charges etc. by the petitioners herein towards the Cantonment Board and some of the receipts have also been annexed by the petitioners herein with the writ petition, which itself shows that the land-in-question falls within the jurisdiction of the Cantonment Board and that ownership rights stand vested in the Ministry of Defence.

13. Further, once the command order dated 22.09.1939 was issued by Maharaja Hari Singh and agreement dated 16.01.1956 was executed on behalf of the State of Jammu & Kashmir by the Chief Secretary of the State, then under which authority and power respondent No.5 issued the eviction notices to the petitioners herein.

14. The petitioners in their petition have also averred that this controversy has already been set at rest by the Apex Court in Civil Appeal No.4326/1971, wherein the Nazool Department has conceded and surrendered to the Union of India vis-à-vis ownership, title and possession of the entire 56 kanals of land in and around Gupkar and Sonwar localities, which also include the property-in-question. Respondents 1 to 5 in their objections have neither controverted nor

denied the same. The Apex Court in catena of judgments has held that any fact stated in the plaint/writ not denied specifically shall be deemed to have been admitted. What is held by the Apex Court in case, titled as, Jaspal Kaur Cheema vs Industrial Trade Links, 2017 (10) SCJ 670, would be relevant to reproduce hereunder:

“8. In terms of Order 8 Rule 3 of the Code of Civil Procedure, 1908 (for short, ‘the Code’), a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order 8 Rule 5 of the Code. In other words, the written statement must specifically deal with each of the allegations of fact made in the plaint. The failure to make specific denial amounts to an admission.”

15. As regards the renewal of lease deed, it is a matter inter se between petitioners and Union of India or Defence Estates Officer, i.e., respondent No.6, whereas respondents 1 to 5 have nothing to do with the same.

16. Therefore, in view of what has been discussed above, I deem it proper to allow the writ petition. Accordingly, the writ petition is allowed and Notice bearing No.75/ACN/AS/16 dated 10.11.2016 and Notice bearing No.ACN/296/PS/16 dated 15.12.2016 issued by Assistant Commissioner, Nazool, Srinagar, are hereby quashed. Connected miscellaneous application(s), if any, accordingly stands disposed of.

Srinagar
26.07.2023
(Anil Sanhotra)

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No