

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

Case:- WP(C) No. 3311/2023
CM No. 8010/2023

**Sanjeev Gupta, Age 54 years,
S/O Ram Lal Gupta, R/oo 49,
Purani Mandi, Jammu**

.....Petitioner

Through: Mr. Sachin Gupta, Advocate

Vs

- 1. Union Territory of Jammu and Kashmir,
Through Commissioner Secretary,
Housing & Urban Development Department,
Civil Secretariat, Jammu.**
- 2. Building Operation Controlling Authority,
Municipal area, Jammu.
Through its Chairman**
- 3. Chief Khalifwarzi Officer,
Jammu Municipal Corporation,
Town Hall, Jammu.**
- 4. Joint Commissioner,
Jammu Municipal Corporation,
Town Hall, Jammu.**
- 5. J&K Special Tribunal, Jammu.
Through its Registrar**

..... Respondents

Through:

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

**ORDER
30.12.2023**

Heard learned counsel for the petitioner.

01. A writ petition OWP no.127/2011 filed in the name of one Abdul Majeed Khan being his attorney holder-Smt. Prem Lata was pending disposal before this Court which came to be dismissed for non-prosecution in terms of an order dated 20.04.2022.

02. For seeking restoration of the aforesaid writ petition, a time barred application for restoration alongwith a condonation of delay application came to be preferred by the petitioner herein, claiming to be the legal representative of the deceased attorney holder – Smt. Prem Lata. In reference to said two applications, this Court, in terms of an order dated 22.12.2023, called upon the petitioner herein, as being the applicant, in the restoration application as well as in the condonation of delay application, to confirm the fact as to whether even the writ petition-Abdul Majeed Khan himself was alive or not, by whose reference the writ petition was filed and pursued by said attorney Smt. Prem Lata before her death.

03. In response to said direction so given, the learned counsel for the petitioner came to apprise this Court that the said writ petitioner-Abdul Majeed Khan was also no more and, accordingly, this Court, vide its order dated 29.12.2023, came to dispose of the applications seeking restoration of the application along with the condonation of delay application as being infructuous as the writ petition itself had abated leaving the petitioner herein, as being the

applicant in said two applications filed in relation to said writ petition OWP no. 127/2011, to work out his legal remedy.

04. Said writ petition OWP no. 127/2011 was addressed in the name of the writ petitioner -Abdul Majeed Khan against a demolition order no. MJ/CEO/134/3/10 dated 07.01.2011 issued under section 7(3) of the J&K Control of Building Operations Act, 1988 (**“Act of 1988”** in short), whereby the writ petitioner-Abdul Majeed Khan was directed to demolish the unauthorized construction as identified in the said demolition order in relation to plot no. 197, Sector 2, Channi Himmat, Jammu.

05. Against the said order of demolition, it is said Abdul Majeed Khan’s attorney holder-Smt. Prem Lata who had sought to maintain statutory appeal under the Act of 1988 before the J&K Special Tribunal, Jammu which was not entertained on account of being preferred beyond a period of limitation and as per the said attorney holder-Smt. Prem Lata, without handing out any formal order the said appeal was said to be non maintainable which constrained her to file said writ petition OWP no. 127/2011.

06. It is in the aforesaid shape of events that the writ petition OWP no. 127/2011 had come to suffer dismissal for non-prosecution and remained so when the petitioner herein came forward with said two applications.

07. The present writ petition is, now, being filed by the petitioner- Sanjeev Gupta, who is the son of the said deceased attorney holder – Smt. Prem Lata with the almost same set of facts as alleged by her in writ petition OWP no. 127/2011 filed in the name of Abdul Majeed Khan.

08. The petitioner is claiming in this writ petition that the writ petitioner - Abdul Majeed Khan was a lessee of the plot no. 197, Sector 2, Channi Himmat, Jammu by virtue of lease-deed dated 14.05.1997 with respect to which he had executed a power of attorney dated 28.02.2004 in favour of the petitioner's mother Smt. Prem Lata and also a written will dated 28.02.2004 in favour of the petitioner and also a notarized agreement dated 26.02.2004 with the petitioner to transfer the lease-hold rights. The lesser of said plot is said to be the J&K Housing Board.

09. In the present writ petition, except for a bare assertion that said Abdul Majeed Khan, the original lessee and the original writ petitioner in writ petition OWP no. 127/2011, has demised in the year 2012 on the basis of an alleged enquiry made by the present petitioner, no date and month of the demise of said Abdul Majeed Khan has been pleaded. Without any reference to death certificate of said Abdul Majeed Khan being placed on record to confirm the fact of demise of said Abdul Majeed Khan the petitioner is calling upon this Court to count said Abdul Majeed Khan a deceased person

when the petitioner has not bothered to plead from whom he came to enquire about alleged death of Abdul Majeed Khan.

10. It is also not pleaded in the writ petition that when said Abdul Majeed Khan had allegedly agreed to transfer the leasehold rights of the said plot in reference in favour of the petitioner by virtue of said agreement to transfer dated 26th February, 2004 read with alleged written will dated 28.02.2004 in favour of the petitioner, then what kept the petitioner away from approaching and applying in time to the J&K Housing Board for the purpose of seeking transfer of the leasehold rights of the said plot in reference upon which the unauthorized building construction as objected to by the Building Operations Controlling Authority (BOCA), Jammu Municipal Corporation Area came to be notified for demolition.

11. Thus, with respect to a demolition order no. MJ/CEO/134/3/10 dated 07.01.2011 addressed against the plot holder-Abdul Majeed Khan, the present writ petition is now sought to be maintained by the petitioner without even impleading the J&K Housing Board as party respondent, without disclosing and confirming the fact of death of Abdul Majeed Khan and the whereabouts of his legal heirs/successors-in-interest.

12. Therefore, through the medium of the present writ petition, the petitioner is trying to dawn upon himself so many legal status

which is the legal heir of Abdul Majeed Khan by way of his alleged will, then as a prospective legal status as being the lessee of the plot in reference of the J&K Housing Board and by that reference the owner of the building structure which as per the demolition order of the Building Operations Controlling Authority (BOCA), Jammu Municipal Corporation Area is an unauthorized and illegal one subject to demolition order. There is however no factual and legal basis spelt out in the writ petition as such how the petitioner can be let by this Court to bear all said status without any legal basis. In fact the petitioner has not even pleaded in the writ petition that in case if the said agreement and the will are in his favour and the attorney of the said plot given by the lessor-Abdul Majeed Khan in favour of petitioner's mother Smt. Prem Lata, then why the writ petition OWP no. 127/2011 was still preferred in the name of Abdul Majeed Khan and also as to why acting upon the said attorney, Smt. Prem Lata did not approach the J&K Housing Board for seeking transfer of the demised plot in favour of the petitioner. So much so, the building permission no. 838/BS/07 dated 06.02.2008 from the Jammu Municipal Corporation, Jammu was sought and obtaining in the name of Abdul Majeed Khan and not in the name of the petitioner herein as being prospective transferee or even in the name of the attorney holder – Smt. Prem Lata.

13. There is more to the writ petition than what meets the eye to which the writ petitioner has not made any effort to set out the requisite pleadings, as such, the petitioner is held to be having no locus to question the demolition order no. MJ/CEO/134/3/10 dated 07.01.2011 issued by the Building Operations Controlling Authority (BOCA), Jammu Municipal Area and also no locus in the eyes of law to relate himself with respect to the plot in reference as well as the building premises thereupon acting at the back of the J&K Housing Board and the legal heirs of Abdul Majeed Khan if he is assumed to be dead.

14. The writ petition is, therefore, held to be not maintainable and is, accordingly, ***dismissed*** *in limine*.

JAMMU
30.12.2023
Muneesh

(RAHUL BHARTI)
JUDGE

Whether the order is speaking : **Yes**