

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

**LPA No. 294/2019, CM Nos. 8469/2021
& 8613/2019**

c/w

LPA No. 295/2019, CM No. 8615/2019

LPA No. 296/2019, CM No. 8618/2019

LPA No. 297/2019, CM No. 8620/2019

LPA No. 298/2019, CM No. 8622/2019

Reserved on : 02.08.2023

Pronounced on : 12.09.2023

LPA No. 294/2019

1. J&K Housing Board through its Managing
Director, Green Belt Park,
Gandhi Nagar, Jammu.

2. Secretary, J&K Housing Board,
Green Belt Park, Gandhi Nagar, Jammu.

3. Deputy General Manager,
Housing Unit No. 1st Channi Himmat,
Jammu.

...Appellant(s)..

Through:- Mr. S.S.Nanda, Sr. AAG.

V/s

1. Chander Shekhar Gupta
S/O Balwant Raj Gupta, R/O 726,
Kanti Niwas, New plot, Jammu.

..Respondents..

2. State of J&K through
Commissioner Secretary H&UD Deptt.,
Civil Secretariat, Srinagar.

...Proforma Respondent(s)..

Through:- Mr. Pranav Kohli, Sr. Advocate with
Mr. Arun Dev Singh, Advocate.

LPA No. 295/2019

1. J&K Housing Board through its Managing
Director, Green Belt Park,
Gandhi Nagar, Jammu.

2. Secretary, J&K Housing Board,
Green Belt Park, Gandhi Nagar, Jammu.

3. Deputy General Manager,
Housing Unit No.1st Channi Himmat,
Jammu.

...Appellant(s)..

Through:- Mr. S.S.Nanda, Sr. AAG.

V/s

1. Satwant Singh S/O Jagat Singh
R/O 304 Bakshi Nagar, Jammu

2. Nirdosh Trehan S/O P.L. Saraf,
R/O 31 DC, Gandhi Nagar, Jammu

--Respondents....

3. State of J&K through
Commissioner Secretary H&UD Deptt.,
Civil Secretariat, Srinagar.

...Proforma Respondent(s)..

Through:- Mr. Pranav Kohli, Sr. Advocate with
Mr. Arun Dev Singh, Advocate.

LPA No. 296/2019

1. J&K Housing Board through its Managing
Director, Green Belt Park,
Gandhi Nagar, Jammu.

2. Secretary, J&K Housing Board,
Green Belt Park, Gandhi Nagar, Jammu.

3. Deputy General Manager,
Housing Unit No.1st Channi Himmat,
Jammu.

...Appellant(s)..

Through:- Mr. S.S.Nanda, Sr. AAG.

V/s

1. Chander Shekhar Gupta
S/O Balwant Raj Gupta, R/O 726,
Kanti Niwas, New plot, Jammu.

..Respondents..

2. State of J&K through
Commissioner Secretary H&UD Deptt.,
Civil Secretariat, Srinagar.

...Proforma Respondent(s)..

Through:- Mr. Pranav Kohli, Sr. Advocate with
Mr. Arun Dev Singh, Advocate.

LPA No. 297/2019

1. J&K Housing Board through its Managing
Director, Green Belt Park,
Gandhi Nagar, Jammu.

2. Secretary, J&K Housing Board,
Green Belt Park, Gandhi Nagar, Jammu.

3. Deputy General Manager,
Housing Unit No.1st Channi Himmat,
Jammu.

...Appellant(s)..

Through:- Mr. S.S.Nanda, Sr. AAG.

V/s

1. Ramesh Gupta S/O Ram Lal Gupta,
H. No. 96, Malhotra Street, Jammu

..Respondents..

2. State of J&K through
Commissioner Secretary H&UD Deptt.,
Civil Secretariat, Srinagar.

...Proforma Respondent(s)..

Through:- Mr. Pranav Kohli, Sr. Advocate with
Mr. Arun Dev Singh, Advocate.

LPA No. 298/2019

1. J&K Housing Board through its Managing
Director, Green Belt Park,
Gandhi Nagar, Jammu.

2. Secretary, J&K Housing Board,
Green Belt Park, Gandhi Nagar, Jammu.

3. Deputy General Manager,
Housing Unit No.1st Channi Himmat,
Jammu.

...Appellant(s)..

Through:- Mr. S.S.Nanda, Sr. AAG.

V/s

1. Balbir Singh S/O Hari Singh
R/O Mohalla Paharian, Jammu

2. Nirdosh Trehan S/O P.L. Saraf,
R/O 31 DC, Gandhi Nagar, Jammu

--Respondents....

3. State of J&K through
Commissioner Secretary H&UD Deptt.,
Civil Secretariat, Srinagar.

...Proforma Respondent(s)..

Through:- Mr. Pranav Kohli, Sr. Advocate with
Mr. Arun Dev Singh, Advocate.

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
CORAM: HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

JUDGMENT**TASHI RABSTAN -J:**

1. Having regard to the fact that all these appeals involve the determination of identical questions of law and facts, these appeals

have been clubbed together and are being decided by this common judgment.

2. Impugned in this batch of appeals is the judgment and order dated 30.07.2019 passed by learned Single Bench in five cases along with equal numbers of contempt petitions in OWP No. 35/2011 titled *Romesh Gupta Vs. State and others*; OWP No. 1492/2010 titled *Balbir Singh and another Vs. State and others*; OWP No. 34/2011 titled *Satwant Singh and others Vs. State and others*; OWP No. 37/2011 titled *Subhash Chander Vs. State and others*; and OWP No. 131/2022 titled *Chander Shekhar Vs. State and others* by virtue of which learned Single Bench has passed a common judgment allowing the writ petitions by closing the proceedings in the contempt petitions.
3. Before the writ Court, petitioners-respondents herein have challenged different orders by virtue of which allotment of plots in Sector 1-A of Housing Colony, Channi Himmat, Jammu made in favour of the writ petitioners-respondents herein has been cancelled for violating Clause No.2 (iii) of Lease Deeds. Perusal of writ Court record shows that the plots in question were leased out to the writ petitioners-respondents herein and possession thereof was handed over to them. The writ petitioners-respondents herein claim that ever since the allotment and handing over of the possession of the plots to them, they have been in exclusive and peaceful possession of the said plots besides have made all requisite arrangements for carrying out/raising of the construction

thereon, but, appellant No.2, without any lawful justification or provocation from the writ petitioners-respondents herein issued the impugned orders and cancelled their allotments. The writ petitioners- respondents herein asserted that before passing the orders impugned, they were neither served with any show-cause notice, nor were they provided any opportunity of being heard. It was also asserted and urged by the writ petitioners-respondents before the writ Court that no allotment can be cancelled and the person in occupation cannot be evicted from the Board premises without following the procedure laid down in Section 40 of the of the Jammu & Kashmir Housing Board Act, 1976 (hereinafter referred to as “Act of 1976”) . Thus, it was argued before the writ Court that the orders impugned are issued without following the mandate of Section 40 of the Act of 1976.

4. The judgment of learned Single Bench has been assailed by the appellants in all these appeals, on the grounds tailored in the appeals.
5. We have heard learned counsels for the parties and also gone through the impugned judgement and the writ Court record.
6. Assailing the impugned judgement, learned counsel appearing for appellants argued that learned Writ Court, while passing impugned judgement, has not appreciated and considered the matter in its right perspective in as much as the case of parties is clear from the original record brought before the writ Court and it is admitted case of the parties that the allottees have violated the terms and

conditions of allotment and even allottees have applied for transfer of leasehold rights, as such, the admission of writ petitioners-respondents herein themselves does not require any further inquiry in the matter. According to learned counsel, the record of allotments of writ petitioners-respondents herein in all five cases was brought and the same speaks something different than considered by the learned Writ Court.

7. Perusal of the file reveals that as many as five writ petitions were filed by writ petitioners-respondents herein before the learned Writ Court. The subject matter of all the writ petitions relates to cancellation of allotment of the plots of different sizes made in favour of the writ petitioners-respondents herein. The learned Writ Court, after considering rival contentions of the parties and perusing the record, allowed the writ petitions and quashed the notices impugned. Learned writ Court also held that quashment of orders impugned, however, would not mean that the appellant-Board cannot proceed against the writ petitioners-respondents herein if they have violated any term or condition of the Lease Deeds . It was also observed while allowing the writ petitions that the appellant-Board, while proceedings against the writ petitioners-respondents herein, however, would keep in mind the mandate of Section 40 of the Act of 1976 and the necessity of complying with the principles of natural justice.

8. While giving our thoughtful consideration to the case set up by appellants and submissions made by learned counsels for the parties, the instant matter falls under the realm of provisions of Jammu & Kashmir Housing Board Act, 1976 .
9. The Jammu & Kashmir Housing Board was established way back in the year 1976 under the auspices of the Act of 1976, aiming at providing affordable shelter to all, to make such schemes and to carry out works as are necessary for the purpose of satisfying the housing needs and providing residential and office accommodation in the J&K. The primary objective of establishing J&K Housing Board was development of housing colonies in urban as well as rural areas of J&K; construction of flats under self-financing schemes; construction of office/ commercial complex; execution of works pertaining to rental housing facilities for government employees.
10. The provisions of Section 40 relate to eviction of certain persons from Board premises. It specifically envisages affording of reasonable opportunity to the person, against whom an order is proposed to be made under Sub-section (1) of Section 40 of the Act of 1976, so as to enable him to submit an explanation and produce evidence, if any, and to show cause why such order should not be made. Not only this, if such a person seeks enlargement of time specified in the notice, extension can be given by the competent authority. If such person files written statement and produces documents, then he is entitled to appear before the officer

proceeding along with his Advocate, Attorney or Pleader. Such is the mandate of the statute and is binding. Section 40 of the Act of 1976 is reproduced hereunder:-

“40. Power to evict certain persons from Board premises.—

- (1) If the competent authority is satisfied,-
- (a) that the person authorized to occupy any Board premises has-
- (i) not paid rent lawfully due from him in respect of such premises for a period of more than two months, or
 - (ii) sub-let, without the permission of the Board, the whole or any part of such premises, or
 - (iii) committed, or is committing any act contrary to the provisions of clause(o) of Section 108 of the Transfer of the Property Act, 1977, or
 - (iv) made, or is making, material additions to or alteration in such premises without previous written permission of the Board, or
 - (v) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises; and
- (b) that any person is in unauthorised occupation of any Board premise the competent authority may, by notice served-
- (i) by Post,
 - (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises,
 - (iii) in such other manner as may be prescribed, order that that person as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice.
- (2) Before an order under sub-section (1) is made against any person the competent authority shall inform the person by notice in writing of the grounds for which the proposed order is to be made and give him a reasonable opportunity of tendering an

explanation and producing evidence, if any, and to show cause why such order should not be made, within a period to be specified in such notice. If such person makes an application to the competent authority for extension of the period specified in the notice, the competent authority may grant the same on such terms as to payment and recovery of amount claimed in the notice as he deems fit. Any written statement put in by such person and documents produced in pursuance of such notice shall be filed with the record of the case and such person shall be entitled to appear before the officer proceeding in this connection by the Advocate, Attorney or Pleader. Such notice in writing shall be served in the manner provided for service of notice under sub-section (1).

- (3) If any person refuses or fails to comply with an order made under subsection (1), the competent authority may evict that person from and take possession of the premises and may for the purpose use such force as may be necessary.

Explanation.- For the purposes of this section and Section 41 the expression "authorized occupation" in relation to any person authorised to occupy any Board premises, includes the continuance in occupation by him or by any person claiming through or under him of the premises after the authority under which he was allowed to occupy the premises has been duly determined."

From reading of Section 40 of the Act, it is evident that the competent authority if it is satisfied that the person authorized to occupy any Board premises has amongst other things, acted in contravention of any terms, express or implied, under which he is authorized to occupy such premises, may by notice served upon such person as well as other person who may be in occupation of the whole or part of the premises, order that

he shall vacate it within one month of the date of service of notice. Sub section 2 of Section 40 of the Act, further provides that before an order under sub section 1 of section 40 is made against any person, the competent authority shall inform the person by notice in writing of the grounds for which the proposed order is to be made and give him reasonable opportunity of tendering an explanation and producing evidence, if any, and to show cause as to why the order of eviction against him should not be passed. If such person responds to the notice, applies to the competent authority for extension of time or files his written statement along with documents etc, such person shall be given a personal hearing before the officer proceeding in the matter. The appearance before the authority can be made by such person through advocate, attorney or pleader. This notice is provided to be served either by post or by affixing a copy of it on the outer door or some other conspicuous part of such premises or in such other manner as may be prescribed by the Rules if any framed under the Act. It is not in dispute that the plots allotted to the writ petitioners-respondents herein fall within the definition of "Board premises" as defined under sub section (3) of Section 2 of the Act. That apart, it is an admitted fact that the writ petitioners-respondents herein are in occupation of the plots in question pursuant to valid lease deeds executed in their favour by the appellant- Board. It is further not in dispute that in case of violation of any terms and conditions of the lease,

the lease granted in favour of the writ petitioners-respondents herein is liable to be terminated and the writ petitioners-respondents herein liable to be evicted. Whether or not any term or condition of the lease has been violated by the allottee(s) is a question of fact to be determined by the competent authority or the authorized officer of the Board after holding enquiry into the matter and providing adequate opportunity to defaulting allottees of being heard in the matter. It is precisely with a view to achieve this object, Section 40 has been engrafted in the Act of 1976. Otherwise also, there is an express provision in the lease agreement providing for determination of lease if the lessee(s) is/are found guilty of breach of the condition in the lease agreement which relates to observance and performance of the covenants and the agreements other than covenants for payment of rent. This power of termination is also exercisable by giving 30 days prior notice to the lessee(s).

11. In the instant case, writ Court has rightly observed that indubitably, neither the mandate of Section 40 of the Act of 1976 has been complied nor the principles of natural justice have been observed. The appellant-Board has taken a unilateral decision that the writ petitioners-respondents herein have violated the condition of the lease contained in clause 2(iii) and have therefore, entailed the cancellation of the allotment.
12. This imperative aspect of the matter cannot be given goby by the appellant-Board herein. It is this important facet of the matter that

has been taken note of by the learned Writ Court while rendering the judgement impugned.

13. When impugned judgement is analysed in the backdrop of submissions made by learned counsels for appellant-Board and grounds of challenge taken in the memo of appeals, we are of the considered view that Writ Court has passed a comprehensive, lucid and well reasoned judgement by taking the writ petitions before it *ad seriatim* and discussed them one by one elaborately.
14. In view of the above, we are not inclined to interfere with the Writ Court judgement as no case is made out which dissuade this Court to take a view contrary to the view taken by the writ Court. As a consequence, the appeals are accordingly **dismissed** and the impugned judgment is, thus, upheld.
15. Copy of this order be placed on the record of each appeal.

(Mohan Lal) (Tashi Rabstan)
Judge Judge

Jammu :

12.09.2023

‘Madan Verma-Secy’

Whether the order is speaking : **Yes/No**

Whether the order is reportable : **Yes/No**