

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 295/2022
CM(792/2022)

Ghulam Qadir Bhat, Age: 68 years.

S/o: Abdul Gani Bhat

R/o: Bagatpora (Handwara), District Kupwara.

...Petitioner(s)

Through: Ms. Arifa Jan, Advocate.

Vs.

1. Union of India through Secretary Government, Ministry of Defence, New Delhi. ...Respondent(s)
2. Defence Estate Officer Kashmir C/o: 56 APO.
3. Assistant Defence Estate Officer, Baramullah.
4. Chief Horticulture Officer, Srinagar, Kashmir.
5. Deputy Commissioner, Kupwara.
6. Tehsildar Handwara.
7. Commanding Officer 21 RR C/o:56 APO.

Through: Mr. T.M. Shamsi, DSGI with,
Ms. Zeenaz Basharat, Advocate for R-1 to 3 &7.
Mr. Mubeen Wani, Dy. AG for R-5 &6.
Mr. Faheem Nisar Shah, GA for R-4.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

ORDER
18.12.2023

ORAL:

1. The proprietary land of the petitioner and his co-sharer measuring 3 kanals and 7 marlas falling in Khasra No. 109 of Village Bagatpora Handwara, ["subject land"] is under the occupation of respondent No. 7, since

the year 1997. The land as well the house has been formally requisitioned and appropriate rental fixed.

2. The grievance of the petitioner as projected in this petition is that at the time of taking over the possession of the subject land by the respondent No. 7, there were fruit trees standing on the land for which no compensation has been paid. The petitioner claims that the Horticulture Department has already assessed the damage to the fruit trees standing on the subject land to the tune of Rs. 2,22,300/- as is borne out by order No. DCK/LAS/REQ/608-10 dated 19th December, 2009, issued by District Development Commissioner, Kupwara.

3. Further, the grievance of the petitioner is that the District Development Commissioner, Kupwara, vide his order No. 547/DDCK of 2005 dated 8th January, 2005, enhanced the rent of the building @ of Rs. 5500/- per month, but the respondent No. 1 to 3 and 7 released the rent only @ 3792/- per month, and, therefore, arrears to the tune of Rs. 2,66,448/- are payable by the respondents 1 to 3 and 7. The petitioner, therefore, seeks a writ of mandamus to the respondents to pay arrears of rent to the tune of Rs. 2,66,448/- along with interest and also a compensation of Rs. 2,22,300/- for damage to the fruit trees standing on the requisitioned land which is under the occupation of respondent No. 7.

4. On being put on notice, respondents 5 and 6 have filed their objections. It is acknowledged by the aforesaid respondents that the proprietary land along with some fruit trees standing thereon is under the occupation of the respondent No. 7, pursuant to a formal requisition. The respondents 4 and 5 have also acknowledged the fact that the damage to the

trees standing on the land was assessed by the department of Horticulture and the petitioner was held entitled to a sum of Rs. 2,22,300/-.

5. With regard to the rental, respondents 4 and 5 submit that the rent of the building which was earlier fixed as Rs. 5500/- was enhanced to Rs. 14,000/- per month vide order dated 4th December, 2017. It is further submitted that the compensation as also the arrears of the rent, if any, payable are to be paid by the respondents 2 and 3.

6. Reply affidavit filed on behalf of respondents 1 to 3 and 7, does not dispute the position as put up by respondents 5 and 6 in their objections. The possession of the land belonging to the petitioner and his co-sharer is not denied. The fixation of the rent is not also denied. It is submitted that the rent of the building was released @ 3792/- per month w.e.f. 01.07.1997 to 30.06.2019 and, thereafter the same was enhanced to Rs. 14,000/- which is being paid to the petitioner regularly. The respondents further submit that at the time of taking over the possession of the building and land, only one tree of pear and three trees of walnuts were standing on the land.

7. Heard learned counsel for the petitioner and perused the material on record, the facts are not in dispute.

8. The claim put forth by the petitioner, with regard to the arrears of rent or compensation for the damage to the fruit bearing trees is not specifically denied by the respondents. Indisputably, when the land in question was taken in possession by the respondent No. 7, which was later on formally requisitioned, there were some fruit bearing trees also on the land.

9. As a matter of fact, as per the revenue record, the land is recorded as Baghi-Khuski. The District Development Commissioner, Kupwara, who is the competent authority to assess the rent, has also got the damage to the fruit

trees assessed through the Department of Horticulture. As per the report submitted by the Department of Horticulture and forwarded to the Respondents 1 to 3 and 7, by the District Development Commissioner, an amount of Rs. 2, 22,300/- is payable to the petitioner on account of damage to the fruit bearing trees.

10. That being the admitted position, the respondents 1 to 3 and 7 cannot deny the payment of the foresaid compensation, if not paid so far. So far as the arrears of rent is concerned, the reply affidavit filed by the respondents 5, 6, and 1 to 3 and 7, it is not very clear. It seems that the arrears of the rent of the building was fixed @ 3792/- per month and was later on enhanced to Rs. 5500/- per month as is appearing from the Government Order No. 7850-DDCK of 2017 dated 4th December, 2017. What is further not clear is, as to when the monthly rental was enhanced from 3792/- per month to Rs. 5500 /- per month.

11. From reading of the order No. 785-DDCK of 2017 dated 4th December, 2017, it transpires that the monthly rental of the building was enhanced from Rs. 3792/- to Rs. 5500/- per month vide order No. 745-DDCK of 2005 dated 8th January, 2005. If that be the position, the petitioner is right in his submission that he is entitled to the arrears of rent to be worked out w.e.f. 8th January, 2005 to 30th June, 2019. This amount would be the differential amount to be worked out by deducting the amount of Rs. 3792/- out of Rs. 5500/-.

12. Having regard to the aforesaid position obtaining in the records and the respective stands of the parties, this petition is disposed of by providing as under:

- (i) Respondents 1 to 3 and 7 are directed to pay an amount of Rs. 2, 22,300/- on account of damage to the fruit bearing trees as is communicated to them by the office of District Development Commissioner, Kupwara.
- (ii) The respondents 2 and 3, shall examine and consider the amount of arrears as are claimed to be payable by the petitioner on account of difference of rent w.e.f. 8th January, 2005, till 30th June, 2019. To put it precisely the petitioner claims that the rent which was fixed in the year 1997 @ Rs. 3792/- per month and was enhanced to Rs. 5500/- per month and the same in the year 2005, which was again enhanced to 14000/- in the year 2017. The enhanced rent which was payable w.e.f. 8th January, 2005, has not been paid.
- (iii) The respondents 2 and 3 shall examine this aspect of the matter and release the arrears of rent, if not already paid, to the petitioner on account of aforesaid difference, as also the amount due to the petitioner on account of damage to the fruit bearing trees within a period of two months from the date of copy of this order is served upon them.

13. Disposed of.

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
18.12.2023
“Mir Arif”