

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

OWP No. 373/2007

Ram Dass Gupta
S/O Shri Bhagmal Gupta,
R/O 7/7-Trikuta Nagar, Jammu,
presently the Managing Director,
Upkar Goods Transport Co. Ltd.,
Residency Road, Jammu

..... Petitioner(s)

Through: Mr. D. S. Chouhan, Advocate

Vs

1. State of Jammu & Kashmir
Through Chief Secretary,
Civil Secretariat, Srinagar.

..... Respondent(s)

2. Commissioner/Secretary,
Law Department,
Civil Secretariat, Srinagar.

3. Commissioner/Secretary,
Haj & Aquaf Department,
Civil Secretariat, Srinagar.

4. Administrator,
Aquaf Department,
Jammu.

5. Special Officer, Haj & Auqaf Department,
J&K Government, Jammu/Srinagar.

Through: Ms. Monika Kohli, Sr. AAG for R-1&2.
Mr. S. S. Nanda, Sr. AAG for R-3& 5.
Mr. Ayjaz Lone, Advocate for R-4.

CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

ORDER

10.07.2025

1. The petitioner, claiming to be tenant/allottee and holding possession over the Wakafs property of respondents situate at Trikota Nagar, Jammu, and apprehending that he may be evicted from the properties held by him legally, in view of the new enactment of the J&K Wakafs Act, 2001, allegedly being ultra

vires to the Constitution, through the medium of this petition, prayed for the following relief(s):

- “(a) Allow this writ petition of the petitioner;*
- (b) By issuance of writ of certiorari quash Clause ‘O’ of Section 3 of J&K Wakaf Act, 2001 and consequently Section 45 and 46 which enable the respondents to treat the persons in unauthorized occupation merely on account of non-renewal of the Lease Agreements.*
- (c) By issuance of writ of Mandamus command the respondents to renew the lease agreement of the petitioner and to allow the petitioner to reside there notwithstanding the provisions contained in Clause ‘O’ of Section 3 and other corresponding provisions under the Wakaf Act.”*

2. Objections stand filed on behalf of all the respondents, contradicting the assertions made in the petition, seeking its dismissal.

3. Learned counsels for the respondents, submit that the petition has been rendered infructuous, in view of the repealing of the J&K Wakafs Act, 2001, sought to be declared as ultra vires the Constitution and as a result quashed, in terms of the Jammu & Kashmir Reorganisation Act 2019, having been enacted by Parliament of India. In this backdrop, it was contended that this petition is liable to be dismissed, having been rendered infructuous.

4. Learned counsel for the petitioner, did not join the issue, stating that no action had been initiated against the petitioners, however, he apprehending to be evicted had challenged the J&K Wakafs Act, whose provisions were allegedly anti tenants/lessees and also in contraventions to the constitutional provisions.

5. In the year 2019, existing State of Jammu & Kashmir was divided into two Union Territories (UTs) of Jammu & Kashmir and Ladakh, with enactment of J&K Reorganisation Act 2019 (Act No.34 of 2019). Chapter XIV of the Act deals with Legal and Miscellaneous Provisions. Section 96 of this Chapter/Act provided as under:

“96. Power to adapt laws

For the purpose of facilitating the application in relation to the successor Union Territories, of any law made before the appointed day, as detailed in [Fifth Schedule to this Act], the Central Government may, before the expiration of one year from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.”

Table -1 of 5th Schedule of the Act, deals with Central Laws made applicable to the UTs of J&K and Ladakh. At Serial No.104, The Wakafs Act, 1995 with the requisite amendment was made applicable to the twin UTs, whereas 3rd Table dealt with State Laws including Governor’s Act which were repealed in both the new UTs. The J&K Wakafs Act, 2001 finds its place at Sr. No.152 in this Table. The J&K Reorganisation Act was enforced w.e.f. 31.10.2019 as notified vide S.O. 2889(E) of 2019 dated 09.08.2019 issued by Department of Jammu & Kashmir Affairs of the Ministry of Home Affairs.

6. With application of Central Law, The Wakafs Act, 1995 and repealing of J&K Wakafs Act, 2001, in the UT of J&K in the year 2019, the petition on hand, to declare Clause (O) of Section 3 as well as Sections 45 and 46 of the J&K Wakafs Act, 2001 as unconstitutional becomes redundant and infructuous,

particularly, when no action was alleged to have been taken against the petitioners in terms of the Act sought to be quashed.

7. Viewed thus, the petition is dismissed, having been rendered infructuous, along with application(s). Interim direction, if any, vacated. No order as to costs.

(MA Chowdhary)
Judge

Jammu
10.07.2025
Raj Kumar

