

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

OWP No. 529/2013

Sudesh Chander, Aged 70 years
S/O Sohan Lal, R/O H. No. 331,
Rehari Colony, Jammu.

..... Petitioner(s)

Through: Mr. Mohit Vaid, Advocate.

Vs

1. State of Jammu & Kashmir
Through Chief Secretary,
Haj & Aquaf Department,
Civil Secretariat, Jammu.

..... Respondent(s)

2. Administrator,
Aquaf Department, Jammu.
3. Incharge,
Field Inspector , City North,
Jammu.

Through: Mr. S. S. Nanda, Sr. AAG for R-1.
Mr. Ayjaz Lone, Advocate for R-2&3.

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 Rehari, 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) An appropriate writ, order or direction in the nature of writ of mandamus commanding the respondents to declare the clause (O) of Section 3 of the Jammu and Kashmir Wakafs Act, 2001 as ultra vires the Constitution of India in as much as the

persons whose lease/license deeds are pending renewal with the respondents are also treated as unauthorized occupants notwithstanding the fact that the petitioner has already applied for renewal of his lease/license deed immediately after the expiry of the lease/license period.

- (b) An appropriate writ, order or direction in the nature of writ of mandamus declaring the provisions of section 37(d), 44, 45 and 46 of the J&K Wakafs Act, 2001 as ultra-vires the Constitution of India as these provisions give unbridled power to only one authority i.e. Administrator Aquaf – respondent no.2 to act as an enquiry officer, and an authority to pass order of eviction as a court.*
- (c) An appropriate writ, order or direction in the nature of eviction under Section 45 of Jammu and Kashmir Wakafs Act, 2001 issued by the respondent no.2 under endorsement no.AIJ/02/322/311-12 dated 05.03.2013 being totally illegal and violative of the provisions of the Constitution of India as also the Constitution of the State of Jammu and Kashmir.*
- (d) An appropriate writ, order or direction in the nature of writ of mandamus commanding the respondents to renew the lease/license deed of the petitioner with respect to the Wakafs property by fixing reasonable rent, which has been leased out to the petitioner since August 1974, lease/license deed of which has been renewed from time to time and lastly renewed w.e.f 01.11.2009, in view of completion of all the formalities and requirements and deposit of requisite fee attending on the renewal of the lease/license deed.*
- (e) An appropriate writ, order or direction in the nature of writ of prohibition restraining the respondents from illegally and forcibly evicting the petitioner from the Wakafs property, which is in occupation and possession of the petitioner since 1974, in any manner.”*

2. Respondents 2 & 3 have filed their objections, contradicting the assertions made in the petition and seek its dismissal.

3. Learned counsel for the respondents submit that this petition has been rendered infructuous in view of repealing of the J&K Wakafs Act, 2001 sought to be declared as ultra vires to the Constitution in terms of the Jammu & Kashmir Reorganization Act, 2019 enacted by Parliament of India. He has fairly stated at the Bar that he has instructions to inform the Court that the respondent-Wakafs shall not act upon the impugned notice in view of application of new enactment on the subject and submits that the respondent-Wakafs be held at liberty to proceed against the petitioner(s) in case they so desire and are entitled to, to proceed in the matter as per the new applicable law. The statement of learned counsel is taken on record.

4. 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.

5. 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, seeking quashment of impugned notice as well as to declare Clause (O) of Section 3 and Sections 37(d), 44, 45 & 46 of the J&K Wakafs Act, 2001 as unconstitutional, becomes redundant and infructuous, particularly, in view of the statement made by the learned counsel for the respondent-Wakafs that the **impugned notice** shall not be acted upon by the respondent Wakafs and the liberty be granted reserving their right to proceed against the petitioner if warranted, in terms of the new applicable law.

6. Viewed thus, the petition is partially **disposed of** having been rendered infructuous along with application(s). Impugned notice dated 05.03.2013 is, however, quashed in view of the statement made on behalf of respondent No.2. The interim direction, if any, shall stand vacated. The respondent-Wakafs, in case, it chooses to proceed against the petitioner, shall deal with the matter in accordance with the Wakafs Act, 1995.

7. No costs.

(MA Chowdhary)
Judge

Jammu
10.07.2025 *Raj Kumar*