

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

Uploaded on 17.10.2025

WP (C) No. 2269/2021

Daleep Kumar and others

.....Appellant(s)/Petitioner(s)

Through: Mr. Rajiv Kumar Sharma, Advocate

vs

UT of J&K and others

..... Respondent(s)

Through:

Mr. Dewakar Sharma, Dy. AG for R-1, 2, 4 and
5

Ms. Chetna Manhas, Adv. vice

Ms. Monika Kohli, Sr. AAG for No. 3

Mr. R. P. Sapolia, Adv. for No. 6

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER
13.10.2025

ORAL:

1. The petitioner, through the medium of the instant petition, has sought the following reliefs:

Certiorari quashing the composite order dated 02.09,2021 passed by the Respondent No. 3 in revision titled "Daleep Kumar Vs Director Local Bodies and Ors." and revision petition titled as "Satpal Versus Director Local Bodies and Ors." as well as proceedings initiated before respondent no. 3, with the further prayer for quashing the lease deed/allotment order made in favour of respondent No. 6.

Mandamus commanding the respondents to allot the shops in question to the petitioners.

ANY other writ, order or direction which this Hon'ble Court may deem fit or proper in the facts and circumstances of the case.

2. Learned counsel for the petitioners submits that the private respondent, namely, Sukhdev Singh was allotted three shops in an arbitrary and illegal

manner as no shop was allotted in his favour on the ground floor by the Municipal Corporation R. S. Pura, which are required to be allotted to the petitioners in terms of the agenda already approved. He submits that a hall has been leased out to the private respondent illegally by the official respondents, which is not in existence. He further submits that in the reply filed by the respondents to the RTI, it is clear that the basis for making allotment is only as per agenda and allottees of ground floor are entitled to the shops constructed on the first floor by giving an access to the said shops on the first floor by constructing stairs from the existing shop already in their possession on the ground floor, that is why there was no access to the four shops constructed over the shops of the petitioners. It is also stated that order impugned and lease deed is totally illegal and are required to be set aside and official respondents be directed to allot the said shops to the petitioners in pursuance to the decision taken by the Notified Area Committee at the time of raising construction.

3. *Per contra*, Mr. Dewakar Sharma, Dy. AG appearing on behalf of the respondents No. 1, 2, 4 and 5 has drawn the attention of this Court to the order impugned dated 02.09.2021 passed by the learned Special Tribunal, Jammu (for short the Tribunal) in a revision petition preferred by the petitioners against the order of allotment/lease dated 20.05.1996 with regard to the lease of a shop measuring 30x13 situated over the ground floor of existing shop Nos. 14-15 and 16 allotted to the respective tenants in the Main Bazar R.S. Pura District, Jammu. He submits that as the disputed questions of fact are involved, which cannot be decided by this Court in a writ jurisdiction. He further submits that the learned Tribunal

has rightly found both the revision petitions as not maintainable as only lease deed were challenged before it, which could have been challenged before a Civil Court.

4. The learned Tribunal, while dismissing the revisions of the petitioners as not maintainable, has observed that there is no denial of the fact that the Tribunal under Section 275 of the Municipal Act, 2000 is competent to revise an order passed by an authority subordinate to it, but in the revisions so preferred by the petitioners, there was no order under challenge, which should have been revised by the learned Tribunal under Section 275 of the Municipal Act and a perusal of the grounds of the revisions further indicate that the petitioners therein have challenged the lease deed dated 20.05.1996 executed between lessor and the lessee, which according to the learned Tribunal, ought to have been challenged before the competent Civil Court. Since there was no impugned order challenged by the petitioners, which could have been revised by the learned Tribunal, the learned Tribunal found the revision petitions not maintainable as only lease deeds were challenged before it and accordingly dismissed the same and the interim direction, as a necessary corollary, stood vacated.
5. It has been argued vehemently by Mr. Dewakar Sharma, learned Dy. AG appearing on behalf of the respondents that it was incumbent on the part of the petitioners to have acted in compliance to the order passed by the learned Tribunal and approached the competent Civil Court against said lease deed, however, the petitioners, instead of approaching the competent

Civil Court, have chosen to file the instant petition under Article 226 of the Constitution, which is not maintainable.

6. This Court is of the view that the remedy to challenge the lease deed dated 20.05.1996 lies before the competent Civil Court as the disputed questions of fact are involved, which cannot be decided by this Court in a writ jurisdiction. The petitioners, instead acting in conformity with the order/judgment passed by the learned Tribunal, have chosen to file the instant petition on false and flimsy grounds and thus, according to Mr. Dewakar Sharma, the instant petition is not maintainable, and is liable to be dismissed.
7. The detailed reply has also been filed on behalf of the respondent Nos. 1, 2, 4 and 5 in which the respondents have taken a specific stand in para No. 6 to 12 and grounds a to t of the writ petition that the petitioners have not projected true and correct facts before this Court, which are reproduced as follows:

“As regard para No. 6 to 12 of the writ petition it is submitted that the petitioners have not projected true and correct before this Hon’ble Court and tried to mislead the Hon’ble Court as a matter of fact, it is respectfully submitted that the Municipal Committee R.S. having a shopping complex of 21 shops at ground floor in main bazaar. The respondent Municipal Committee decided to raise construction of Ist floor over the said existing shops and deliberations held a meeting on 22.03.1996 wherein it was decided to raise construction of Ist floor over the row of 21 shops under self financing scheme and to be allotted to those who have already been allotted shops on ground floor subject to conditions that cost of construction which will be raised by each tenant over his shops will be paid by them in different spells in lieu of premium and expenditure incurred was to be deposited by the respective tenants. However, the petitioners despite having full knowledge about the construction of first floor did not choose to participate in the said scheme rather than refused to contribute the amount for construction of shops. Once the petitioners did not participate in the said scheme have not right to challenge the decision taken by the Municipal Committee while allotting to others. It is further submitted that party which didn’t participate in process lacks the standing to challenge the decision taken by Municipality. The writ petition filed by the petitioners challenging the order impugned

passed by the J&K Special Tribunal in the present writ petition is not maintainable and as such merits dismissal.

As regards para No. (a) – (t) of the grounds, it is respectfully submitted that the petitioners have not come with clean hands before this Hon'ble Court and concealed the material facts. As a matter of fact it is respectfully submitted the petitioners did not choose to participate in self financing scheme and rather refused to contribute the amount for construction as such have not right to challenge the allotments made in favour of private respondents. It is further submitted that the order passed by the J&K Special Tribunal has rightly dismissed the revision petitions filed by the petitioners vide dated 02.09.2021 which is sustainable in the eyes of law.”

8. A separate reply has also been filed on behalf of respondent No. 6, wherein the respondent No. 6 has taken a specific stand that the shop No. 14 was allotted to Tilak Raj and Badri Nath. The petitioner No.1 i.e. Daleep Kumar has neither produced any document, which shows that the said shop was transferred in his name and thus, he has no *locus standi* to file the instant petition by taking a preliminary objection.
9. Heard learned counsel for the parties and have also perused the stand taken by the respondents, particularly in reference to the order passed by the learned Tribunal.
10. I am in agreement with the arguments advanced by Mr. Dewakar Sharma, learned counsel appearing on behalf of respondent Nos. 1, 2, 4 and 5 that the issue with regard to challenging the lease deed ought to have been raised by the petitioners before the competent Civil Court. However, in conformity with the order passed by learned Tribunal, the petitioners have approached this Court and this Court while exercising the writ jurisdiction, cannot go into the disputed questions of fact nor it is within the domain of the constitutional Court to adjudicate the factual disputes and rightly so, the petitioners were relegated back to the learned Civil Court to have raised the issue of genuineness of the lease deed dated

20.05.1996 executed between two parties so as to clinch the controversy in question.

11. The petitioners instead of approaching the learned Civil Court have filed the instant petition, which is not maintainable and the challenge thrown to the order passed by the learned Tribunal, through the medium of the instant writ petition is devoid of any merit. The same is, accordingly, dismissed along with all connected application(s). However, dismissal of the writ petition shall not come in the way of the petitioners to approach to the competent civil court in terms of order passed by the learned Tribunal with a view to challenge the lease deed dated 20.05.1996, if so advised.
12. Since the petitioners have chosen a wrong forum by filing the instant petition, instead of approaching the Civil Court, this Court in the peculiar facts and circumstances of this case, deems it proper, to observe that the limitation period in the instant case shall not come in the way of the petitioners to seek appropriate remedy in terms of the order of the learned Tribunal and any observation made by this Court while deciding the instant petition shall not come in the way of the Civil Court to decide the controversy.

(Wasim Sadiq Nargal)
Judge

Jammu
13.10.2025
Rakesh

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