

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

Reserved on: 28.02.2025
Pronounced on: 12.03.2025

WP(C) No. 3628/2019
CM No. 7531/2019

Thakur Krishan Singh, aged 77 years
S/O Late Sh. Thakur Ganga Singh
R/O Village Adjan Devsar,
P.O Gopalpora, Tehsil & District Kulgam
A/P 58, Mohalla, Nariana, Jammu.

.....Petitioner(s)

Through: Mr. Munish Sharma, Advocate.

Vs

1. State of J&K through
Relief & Rehabilitation Commissioner (Migrants)
Civil Secretariat, Srinagar.
2. Divisional Commissioner, Jammu
(Chairman Screening Committee Kashmir Migrants)
3. Inspector General of Police, CID, J&K.
4. Relief Commissioner,
[Relief Organization (M)]
Jammu.

..... Respondent(s)

Through: Mr. Vishal Bharti, Dy. AG.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

01. The petitioner through this writ petition under Article 226 of the Constitution of India, seeks direction to the respondent No. 1 to declare the petitioner as 'Migrant' in terms of Section 2(e) of the J&K Migrant Immoveable

Property (Preservation, Protection & Restraint on Distress Sales) Act, 1997 and also to grant him relief as per the policy for migrants under the aforementioned Act.

- 02.** The petitioner in his petition asserts that the petitioner is a former employee of J&K State Tourism Corporation having been superannuated on 31.08.2000; that the petitioner, who hails from Kashmir valley, migrated from there, after the militancy broke out in the State of Jammu and Kashmir and has been residing at Jammu since the year 2000 as 'Migrant' but has not been given the benefits of migrant which other similarly situated migrants are enjoying; that on 05.10.2001, the petitioner represented to Revenue, Relief and Rehabilitation Minister, requesting him to register the petitioner as a 'Migrant' under the relief category, who after taking a note of the same, directed the respondent No. 4-Relief Commissioner, Relief Organization (M), Jammu to examine the case of the petitioner who, however, overlooked the same for the reasons best known to him; that pursuant to letter dated 23.07.2007, IGP, Srinagar wrote to respondent No. 4-Relief Commissioner, Relief Organization (M), Jammu, admitting and authenticating the case of the petitioner as a 'Migrant'.

- 03.** It is next asserted that on 20.04.2013, the respondent No. 1-Relief and Rehabilitation Commissioner (Migrants) registered the petitioner as a 'Migrant' under the relief category for a period of three months; that on 01.08.2013, the respondent No. 1 passed an order stating that the registration of the petitioner was temporary and expired on 20.07.2013; that on 08.10.2014 the petitioner, with the CID report whereby it was authenticated that the petitioner is a 'Migrant', represented to the respondent No. 2-Divisional Commissioner (Chairman Screening Committee Kashmir Migrants), Jammu, requesting him for extension of his registration as 'Migrant'; that on 27.10.2018, respondent No. 2-Divisional Commissioner (Chairman Screening Committee Kashmir Migrants), Jammu addressed a communication to the Deputy Commissioner, Jammu admitting the credentials of the petitioner but inspite of that the petitioner was not registered as 'Migrant'.
- 04.** Lastly, the petitioner has pleaded that the petitioner has a right to be registered as 'Migrant' since the petitioner falls in the definition of the 'Migrant' in terms of Section 2(e) of the J&K Migrant Immoveable Property (Preservation, Protection and Restraint on Distress Sales)

Act, 1997 as initially the petitioner was even registered as a 'Migrant' in the year 2013 for a period of three months.

05. Pursuant to notice, the respondents No. 1 and 4 have filed their objections stating therein that the answering respondent-Relief and Rehabilitation Commissioner (Migrants) registered the petitioner as 'Migrant' provisionally for three months but was not approved by the Screening Committee in view of the fact that provisional registration was granted to the petitioner without following due procedure; that there is no provision of provisional registration nor the Relief and Rehabilitation Commissioner (M) is authorized to grant any registration to a 'Migrant' which is domain of Screening Committee constituted by the Government in the matter. Lastly, it is prayed that the petition of the petitioner be dismissed.

06. Objections on behalf of the respondent No. 3 has also been filed wherein it is stated that the case of the petitioner, on being received, from Relief & Rehabilitation Commissioner (M), Jammu for verification, was sent to field formations for report; that the report was received, indicating that the petitioner is originally resident of Adijan Devsar, Kulgam, who was appointed in Tourism Department, remained posted in Jammu region where he

got married; that the petitioner had not migrated from Kashmir to Jammu due to any threat perception but had shifted his residence from Kashmir to Jammu before the eruption of militancy; that he occasionally visits his native village to look after his properties and his family members are also settled at Jammu; that the role of CID organization is only to conduct the verification of character and antecedents of an individual and it has no prerogative of deciding whether or not to extend any relief under 'Migrant' quota which is the sole domain of the concerned authorities.

07. Heard learned counsel for the parties and perused the record.
08. The petitioner, through the medium of this petition, seeks a direction to the respondents to declare him as 'Migrant' as he was stated to have migrated from his native place Adjan Devsar, Kulgam firstly, because of his job in Jammu and later due to the eruption of insurgency in Kashmir valley where he was stated to be under constant threat being a member of the minority community. It appears that with the intervention of the higher ups in the executive, the petitioner was registered as a 'Migrant' on temporary basis for three months on 20.04.2013 upto 20.07.2013.

- 09.** It appears that after the temporary registration of the petitioner as 'Migrant', a report was sought from the CID organization with regard to the petitioner, who reported that the petitioner had not migrated from Kashmir to Jammu due to any threat perception, but has shifted his residence from Kashmir to Jammu before eruption of militancy and that he occasionally visited his native village to look after his properties and that his family members are also settled at Jammu.
- 10.** In normal course, the role of the CID organization is only to conduct the verification of character and antecedents of an individual and the status of being a 'Migrant' has to be decided by the Screening Committee headed by Divisional Commissioner, Jammu. The respondents have not placed on record any decision taken by the Screening Committee, even based on CID verification.
- 11.** The petitioner has pleaded that he had been transferred to Jammu while serving in J&K Tourism Development Corporation in the month of December, 1988 and continued in service till his superannuation on 31.08.2000 and that his landed and immoveable properties are situated in village Adjan Devsar, tehsil Kulgam district Anantnag. The CID wing of J&K Police had also certified to this effect that the petitioner, who

was a native of district Kulgam had been residing in House No. 9 B/C, Gandhi Nagar, Jammu of one Kawaljeet Kour along with his family.

- 12.** The petitioner had been registered temporarily under relief category as 'Migrant' in the year 2013 by Relief and Rehabilitation Commissioner (Migrants), Jammu vide his Order No. RRCM/Regd/2021/12-18 dated 20.04.2013. The CID wing of J&K Government on 10.03.2014 had authenticated the facts with regard to native place of the petitioner and his present status of stay in Jammu but recorded that there was no specific threat to him in his native village as ten families belonging to Rajput (Hindus) are presently residing in the native village without any threat. The Deputy Commissioner, Kulgam, vide his No. DCK/ACR/M/189/2018 dated 27.01.2018 had taken up the matter with Deputy Commissioner, Relief Organization, Jammu indicting that the petitioner had migrated in Jammu in the year 1992 when militancy was on its peak from his native place along with family due to militant threats.
- 13.** Petitioner has prayed that respondent-State be directed to declare him as 'Migrant' in terms of J&K Migrant Immoveable Property (Preservation, Protection &

Restraint on Distress Sales) Act, 1997. Clause (e) of section 2 of the aforestated Act, provides as under:

“2(e).“Migrant” means any person who has migrated from Kashmir Valley after 1st November, 1989 and is registered as such with the Relief Commissioner and includes a person who has not been so registered on the ground of his being in service of the Government in any moving office, or having left the Valley in pursuit of occupation or vocation or otherwise, and is possessed of immovable property in the Valley but is unable to ordinarily reside there due to the disturbed conditions.”

The petitioner, who is claimed by the respondents to have shifted his residence from Kulgam to Jammu, in pursuit of his job and possessed of immovable property in the Valley, but is unable to ordinarily reside there due to the disturbed conditions, is a ‘Migrant’ in terms of its definition as provided under Section 2(e) of the J&K Migrant Immoveable Property (Preservation, Protection & Restraint on Distress Sales) Act, 1997.

14. As per the reply filed by the respondents that as per the Scheme governing Migrants, the registration of a person as a ‘Migrant’ is the domain of Screening Committee constituted by the Government and only on the recommendations of the Screening Committee, the Relief and Rehabilitation Commissioner (M) registers a person as ‘Migrant’.
15. It appears that the matter has not been considered by the Screening Committee. The fact that the petitioner was

the native of a village in Kulgam District and was away since the year 1988 in connection with his job in Tourism Development Corporation in Jammu and had not returned permanently to his native place due to threat apprehensions required to be considered. In such a case, the question, which arises for consideration of this Court is that when he is not able to return to his native place due to threat perceptions to look after his ancestral landed and immoveable properties, how those are to be protected. The member of the minority community generally feels threat perceptions in whole of Kashmir due to militancy incidents, more particularly in rural areas of South Kashmir where targeted killings had taken place in the recent past as well. It is for the Screening Committee to look into the matter so that the petitioner does not suffer on account of not being declared as 'Migrant', which will render him unable to seek protection of his property from the vagabonds and encroachers.

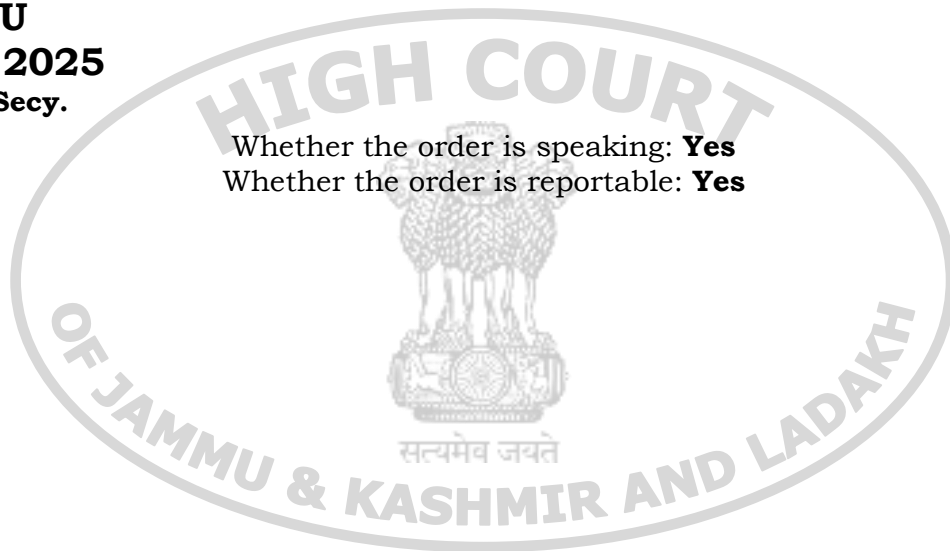
- 16.** In the aforesaid backdrop of the matter, this petition is disposed of with a direction to the respondent No. 2-Divisional Commissioner, Jammu who happens to be the Chairman, Screening Committee, Kashmir (Migrants), to consider the matter afresh and take a decision in the

matter, expeditiously, preferably within three months from the date a copy of this order is supplied to him.

- 17.** Petition is, accordingly, **disposed of** along with connected application(s). No order as to costs.
- 18.** Record be returned back to Mr. Vishal Bharti, Dy. AG against proper receipt.

(M A CHOWDHARY)
JUDGE

JAMMU
12.03.2025
Naresh/Secy.



Whether the order is speaking: **Yes**
Whether the order is reportable: **Yes**