

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 82/2024

Reserved on: 16.04.2024
Pronounced on: 08.05.2025

Shahbaz Sultan and others

.... Petitioner/Appellant(s)

Through:- Mr. Mian Tufail, Advocate.
Mr. Amin Khan, Advocate.

V/s

Union of India and others

.....Respondent(s)

Through:- Mr. T.M. Shamsi, DSGI.

CORAM:

HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

Per: Sindhu Sharma (J)

01. This intra-court appeal is directed against the judgment dated 03.04.2024, passed in OWP No. 19/2018, titled '*Shahbaz Sultan and others vs. Union of India and others*', whereby the writ Court has dismissed the writ petition of the appellants.

02. The office of Inspector General, STC, BSF, Kashmir, Srinagar issued a tender notice dated 30.12.2017, inviting public auction for the purpose of renting out various civil shops located within the shopping complex of the BSF campus, Humhama, for a period of 11 months.

03. The tender notice was assailed by the appellants by filing a writ petition. They sought quashing of the tender notice dated 30.12.2017 with a further direction to the respondents to not to give effect to the said tender notice and also to allow the appellants to continue running the

shops which were allotted to them for conducting their business and to accept future rentals from them.

04. The appellants also sought a direction to the respondents to restrain them from acting upon the tender notice until the representation of the appellants was considered and decided.

05. The contention of the appellants/petitioners in the writ petition was that they had started their business in the shops temporarily constructed by the respondents in the year 1990, with the aim of supplying essential goods to the families of BSF personnel and their family when the situation in the erstwhile State was not conducive. The respondents were in need of the allotment and the petitioners had also extended the support by providing all the material.

06. The shops, constructed on a temporary basis, were allotted to the appellants with the understanding that they would cater to the needs of BSF families residing in Humhama, Srinagar. The appellants continued running their businesses in the allotted shops on rental basis under assurances provided by the respondents. In the year 2013, the respondents issued notices for recovery of old dues and rentals. The appellants conceded to the proposal and accepted the shops on rental basis. In the year 2016, the respondents conducted an auction of these shops, assuring the appellants that it was a one-time process and rental amounts would be fixed accordingly, as has been done in other States.

07. The appellants submitted that they relied upon the assurance that no further auctions would be held, however, contrary to such assurance, the respondents issued a fresh tender notice for re-auctioning the shops. This,

according to the appellants, was contrary to law, as they were holding the shops as tenants and could at best be asked to pay additional rentals.

08. It is submitted that the appellants had been running their businesses from the tin-fibre sheds constructed by the respondents since 1990, particularly during the period of turmoil when the security situation was grave and movement was restricted. During that time, the appellants provided essential goods to BSF personnel and their family members within the security premises, when no one else had access.

09. The appellants submit that the impugned tender notice dated 30.12.2017 is liable to be quashed as they have now been properly allotted the respective shops and have been paying increased rentals regularly. They have made substantial investments in their businesses and would not be able to compete afresh in the tendering process. They contended that this would violate their right to trade, livelihood, and the doctrine of promissory estoppel, as the shops already allotted to them cannot be subjected to further auction.

10. It is further argued that the shops allotted to the appellants, who are tenants therein, cannot be subjected to open auction, especially when they have been complying with demands for increased rent. Therefore, the appellants submit that the proposed auction infringes their fundamental rights and is arbitrary, unjust, and unconstitutional. The respondents, as per the appellants, have no authority to evict them from the shops as they have been continuously occupying up to the year 2017.

11. The respondents have filed their objections wherein they have submitted that 14 amenity shops with permanent structures and 6 with

temporary structures were constructed in the year 2010 and allotted to civilians to ensure uninterrupted availability of essential commodities to BSF troops and their families at reasonable rates at Humhama, Srinagar. However, the shopkeepers were running these shops without paying rent or electricity charges, as highlighted by an internal audit. The actual requirement of shops was assessed and rental and electricity charges were fixed through a draft agreement. A Board of Officers was constituted by the Inspector General, BSF Kashmir vide order No. 1005/Adm/OP-Shop/12/329-32 dated 31.05.2012 and L/No. 1005/Adm/B-65(A)/OP-Shop/12/514-17, dated 07.08.2012, to assess the actual requirement of shops at Humhama Campus and also to fix the rent and electricity charges of these shops as well as to prepare fresh draft agreement contracts for use and occupation of these shops. Accordingly, notices were issued to the shopkeepers to clear outstanding dues and deposit rent installments.

12. A tender notice bearing Notice No. Prov/Tender-Shop/STC-SGR/2016/21686-93, dated 26.12.2016, was issued for auction of 17 amenity shops. The process was completed, resulting in the selection of successful bidders and out of the 17 shops, agreements were executed in respect of 14 shops with the appellants, who became allottees through the said auction process. The auction was conducted for a fixed period of 11 months.

13. As the earlier allotment period was to expire in February 2018, the respondents issued a fresh tender notice bearing No. Prov/Tender-Shop/STC-KMR/2017/19226-35, dated 30.12.2017, inviting bids for the next term.

14. This auction process was challenged by the appellants on the grounds enumerated above. The respondents submit that the appellants

were at liberty to participate in the said auction process by adhering to its terms and conditions. However, instead of doing so, they approached this Court and by way of an interim order, this Court directed that status quo as on that date be maintained.

15. The learned Writ Court, after hearing arguments from both sides, concluded that there was neither a factual nor a legal basis for the appellants to harbour a legitimate expectation that the allotment of shops would continue indefinitely in their favour, especially as the arrangement was nearing its end.

16. It is further submitted that the appellants were in the process of mobilizing a gathering within the BSF Campus, Humhama and at no point, the petitioners had denied having entered into a written agreement with STC, BSF Campus, Humhama, in March 2017 for use and occupation of the respective shops for a period of 11 months. Consequently, the learned Writ Court held that the appellants had no enforceable legal right, entitlement, or claim that could interdict the auction exercise and accordingly dismissed the writ petition.

17. The contention of the appellants is that they had established their businesses as per the requirements of the respondents in the year 1990 and are, even today, operating from the same shops which were initially allotted to them. They submit that, having built their livelihood over the decades and now having crossed the age of 40 years and cannot be deprived of their livelihood.

18. The respondents, having assured them of continued occupation of the said shops, cannot now be permitted to resile from their promise and put them to auction. It is submitted that they had established various

businesses in good faith and at considerable personal risk, therefore, according to the appellants, the decision to put the shops to auction is arbitrary, unfair, and unconstitutional.

19. It is also contended by the appellants that they have devoted their youth to running these public amenity shops and have made significant investments, often through loans obtained from various financial institutions. Though the learned writ Court acknowledged that the appellants provided essential facilities to the BSF Campus, Humhama, during difficult times, it failed to protect them from eviction, which is being pursued without adherence to due process of law.

20. The admitted fact, that the appellants had entered into agreements pursuant to the tender notice dated 26.12.2016, for a fixed term of 11 months. Upon the expiry of the said term, the respondents initiated a fresh auction process. The relationship between the appellants and the respondents was purely contractual and commercial in nature. Although the appellants may have rendered services within the BSF campus, they did so with profit considerations, under a mutually agreed commercial arrangement.

21. The auction process introduced by the respondents aims to ensure transparency and fairness, and it is a settled law that the State and its instrumentalities must ordinarily resort to public auction for allocation of commercial assets. Having voluntarily entered into the agreement pursuant to the tender notice and having clearly accepted the eleven month term, the appellants cannot now claim a vested or perpetual right of occupancy, especially when they have accepted the auction process and entered into tenancy for eleven months in 2016.

22. The law does not permit a person to approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage" to which he could only be entitled on the footing that it is valid and then turn around and say it is void for the purpose of securing some other advantage. The appellants, having participated in the auction process of 2016 and having remained allottees for eleven months, cannot now turn around and challenge the same process after the period of allotment has completed.

23. The Hon'ble Apex Court in **'Rajasthan State I.D.I. Corporation Ltd. and another vs. Diamond and Gem Development Corporation Ltd. and another'**, (2013) 5 SCC, on the issue of approbate and reprobate has held as under:

"9. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience."

24. This apart, Mr. T.M. Shamsi, learned DSGI, has placed on record communication dated 16.04.2024, indicating that the shops in question are now required to address the acute accommodation shortages at the STC, which is currently housing over 1,450 trainees undergoing Basic Recruit Training (BRT). The structures are proposed to be used for accommodating troops. It is also stated that eight temporary shops have

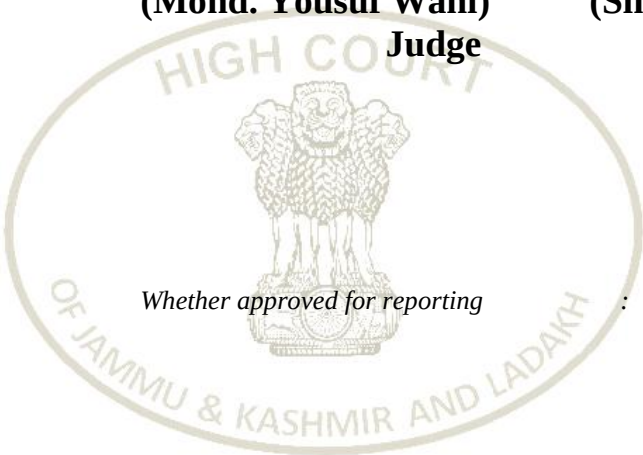
already been demolished due to security concerns, being adjacent to the Air Base within the same premises. The respondents' requirements must be given precedence, considering their legitimate security concerns as well as requirements of their troops. The petitioner, therefore, cannot claim any right to continue in occupation.

25. In view of the aforesaid facts and circumstances, no ground for interference is made out. The appeal, being without any merit, is accordingly dismissed.

(Mohd. Yousuf Wani)
Judge

(Sindhu Sharma)
Judge

Jammu:
08.05.2025
Michal Sharma/PS



Yes/No