

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA 135/2019

ZAHOOR AHMD BADOO

...Petitioner/Appellant(s)

Through: Mr. M.M. Dar, Advocate with
Ms Saika, Advocate

Vs.

STATE OF JK AND OTHERS

...Respondent(s)

Through: Mr. Waseem Gul, GA

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDE R

02.07.2025

Per Sanjeev Kumar-J (oral)

1. Impugned in this appeal filed by the appellant under Clause 12 of the Letters Patent is an order and judgement dated 5th April, 2019, passed by the learned Single Judge [“the writ Court”] in OWP No. 188/2013 titled **“Zahoor Ahmad Badoo Vs. State of JK and others”**, whereby the writ Court has dismissed the writ petition filed by the appellant herein, challenging the letter bearing No. Legal/Bla-372/650-51 dated 3rd September, 2013, issued by the Deputy Director Health Services, Kashmir, and communication No. BMO/ADM/1178-80 dated 20th September, 2013.
2. The aforesaid communications were essentially for directing the appellant to vacate the fair price medical shop in possession of the appellant within a period of one week i.e. w.e.f. 20th September, 2013. The writ petition was contested by the respondents on the ground that the allotment of the space made in favour of the appellant was only for a period of three years and, therefore, he had no right, title, or interest to continue in possession of the said shop beyond the period of three years. The writ petition was considered by the writ Court and, in terms of judgment dated 5th April, 2019, impugned in this appeal, the same was dismissed, holding that the appellant had no

right to remain in possession of the shop/space used for running the fair price medical shop beyond the period of three years. The writ Court has not passed any direction with regard to the payment of rental qua the shop which remained in possession of the appellant till it was actually vacated.

3. The impugned judgment has been challenged by the appellant on various grounds, however, during the course of the arguments, learned counsel for the appellant fairly submitted that the space/shop in question has already been vacated and the building stands dismantled and, therefore, the relief for continuing in possession of the shop has become redundant. He, however, submits that the judgment passed by the writ Court is being misconstrued by the respondents, in that they have directed the appellant to pay an amount of Rs. 19 lacs towards rental of the space, relying upon the judgment passed by the writ Court.
4. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the writ petition, as a matter of fact, has been rendered infructuous. Neither is the shop in question now in possession of the appellant nor the same now exists on spot. The building where this space was available and was given to the appellant is reportedly demolished. The only issue that needs to be considered is whether the judgment impugned dated 5th April, 2019, can be construed to be a direction to the respondents to recover a particular sum as rental for the use and occupation of the space allotted to the appellant in the year 2004.
5. We have gone through the judgment impugned in its entirety and, in particular, the operative portion thereof, but could not find such direction. It is true that in the first para of the judgment, the writ Court has taken note of the submissions of the learned counsel for the respondents that the appellant owed a sum of Rs. 19 lacs as rental of the space to the respondents. There is, however, no direction in this regard passed by the Court. The reference to a direction contained in the impugned judgment for recovery of the amount, as is evident from the communication dated 24th April, 2019, is factually incorrect.
6. While, we find nothing wrong in the judgment passed by the Writ Court, yet we deem it appropriate to clarify that the judgment

impugned cannot be construed to be a direction to the respondents to recover a particular amount from the appellant on account of use and occupation charges of the space permitted to be used by the appellant by the Block Medical Officer, Keeri. The payment of rental/ use and occupation charges, if any, payable by the petitioner can be recovered by the respondents in accordance with law. It would, however, be open to the appellant to challenge the fixation of charges if the same are found to be arbitrary and not in consonance with the space remained in occupation of the appellant.

7. With these observations, this appeal is **dismissed**. The amount of Rs. 2 lacs deposited shall be released in favour of the respondents and the same shall be adjusted towards the rental liability of the appellant, if any.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
02.07.2025
"ARIF"

Whether approved for reporting? Yes/No

