

S.No.15

Regular List

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

WP(C) 2549/2021

MUSHTAQ AHMAD ZARGAR
 S/O GHULAM NABI ZARGAR
 R/O KHAN-KHAI MULA, SRINAGAR
 A/P NATIPORA, DISTRICT SRINAGAR

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

Through: Mr. Syed Abid Parvaiz, Advocate

Vs.

1. UT OF JAMMU AND KASHMIR THROUGH
 COMMISSIONER SECRETARY TO
 GOVERNMENT, HOME DEPARTMENT,
 CIVIL SECRETARIAT SRINAGAR/JAMMU
2. INSPECTOR GENERAL OF POLICE
 SECURITY, J&K GOVERNMENT
 SRINAGAR/JAMMU
3. DEPUTY COMMISSIONER SRINAGAR

...Respondent(s)

Through: Mr. Mohsin Ul Showkat Qadri, Sr. AAG with
 Ms. Nadiya Abdullah, AC
 Ms. Rahila Khan, AC

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGEMENT

01-07-2025

(ORAL)

1. The petitioner through the medium of the present writ petition filed under Article 226 of the Constitution of India has sought the following relief(s):

- a) Certiorari, thereby quashing the impugned order No. 1629 of 2015 dated 13/06/2015 issued by the respondent No. 2.
- b) Mandamus, thereby commanding the respondents to refer the case for assessment of rent to PWD/ R&B department.
- c) Mandamus, thereby commanding the respondents to clear all the liabilities on account of electricity fee, water tax, lease premium, municipal tax etc. up to the date.
- d) Mandamus, thereby commanding the respondents to pay the rent for occupation of two storied residential house with attic and 16 Marlas of land to the petitioner w.e.f 13/11/2004 till date after the assessment is done by the PWD/R&B department.

e) Mandamus, thereby commanding the respondents to take steps for vacating the premises of the petitioner and handover possession of the premises to the petitioner in accordance with rules within reasonable period of time.

2. The petitioner is owner in possession of two storied residential house with attic situated at Harco Colony, Rawalpura Srinagar constructed on a plot of land measuring 16 marlas under survey No. 473 min, khewat No. 207 Khata No. 982.
3. The respondent No. 2 passed the order No. 1629 of 2015 dated 13.06.2015, whereby rent with regard to two storied residential house with attic and 16 marlas of land @ Rs. 792/ per month has been fixed with the conditions that all the liabilities on account of electricity fee, water tax, lease premium, municipal tax etc. shall be liquidated up to the date by the owner and necessary NOC's in this regard was to be obtained from the petitioner.
4. The petitioner approached to the respondents with a request for payment of rent as per the Government order, but despite repeated requests nothing was paid to him and feeling aggrieved of the inaction on the part of respondents, the petitioner earlier filed a writ petition OWP No. 470/2011, which was disposed of vide an order dated 01.08.2014, the operative para is reproduced as under:

“In view of the aforesaid stand taken by the parties, the writ petition along with connected IAs is disposed of in the following manner:

The petitioner will produce the original Sale Deed before the DIG, CKR, Srinagar, within one week. The said authority shall process the case of the petitioner for payment of outstanding rent and same shall be paid to the petitioner within two weeks thereafter. The official respondents shall also take steps for vacating the premises of the petitioner and handover the vacant position of the premises to the petitioner in accordance with rules. Efforts shall be made to handover the possession within reasonable dispatch.”

5. Since the aforesaid order dated 01.08.2014 was not complied with, the petitioner was constrained to file a contempt petition, in which, the respondents filed a compliance report and placed on record the order No. 1629 of 2015 dated 13.06.2015, wherein the rent has been fixed @ Rs. 792/- per month.
6. The petitioner, through the medium of the present petition, has challenged the impugned order, *inter alia*, on the following grounds; that the respondent No. 2 Inspector General of Police Security is not the competent authority and cannot fix the rent as per his sweet will and wish of a two story residential house @ Rs. 720/- per month with the conditions that all the liabilities on account of electricity fee, water tax, lease premium, municipal tax etc. was to be liquidated up to the date by the owner and necessary NOC's in this regard was to be obtained. It is the further case of the petitioners that the respondent No. 2 was duty bound to have referred the matter to R&B Department for assessment of rent as per the schedule prescribed by the Government for fixation of the rent but fixation of rent @ Rs. 792/- is quite meager and against the norms. That the impugned order has been issued without due application of mind and the respondent No. 2 has not made assessment of the rent on the basis of guidelines issued by the Government in this behalf.
7. *Per contra*, response stands filed by the respondents, in which they have taken a specific stand that non –payment of rentals on account of occupation of the property of petitioner had occurred only due to the non-production of the pre-requisite documents by the petitioner and it is pleaded that as soon as, the requisite documents are received from the petitioner, the admissible rentals will be released in favour of the petitioner.
8. It is further stated that in so far as the enhancement/re-assessment of the rentals in respect of the property of the petitioner is concerned, the respondents have already taken up the matter with Dy. Commissioner, Srinagar, who happens to

be the Chairman of District Level Rent Assessment Committee and the report from the said office is still awaited.

9. It is further stated that on the directions of the Home Department, J&K, PHQ vide letter dated 05.05.2024 followed by reminder dated 28.06.2024, the matter has been taken up with the Director Estates Kashmir along with list of properties under occupation of Security Forces which also include, the case of the petitioner as well with a request to take up the matter with the concerned District Magistrate to get the rent assessed afresh in light of the directions passed by the higher authorities, however, the response is awaited.
10. A separate set of reply has been filed by respondent No. 3, in which, he has admitted that the petitioner is the owner in possession of residential house on land measuring 16 marlas falling under khasra No. 673 in estate Rawalpura on the strength of a sale deed mutated vide No. 9519 and the field staff also visited the residential house of the petitioner and found that the same is under occupation of CRPF.
11. Heard and perused the material on record.
12. With the consent of learned counsel for the parties the matter is taken up for final disposal.
13. The only grievance of the petitioner which survives at this stage is for re-assessment of the rent of the property in question by the competent authority in conformity with the rules in vogue in the light of stand taken by the respondents. Since, the matter has already been referred to the appropriate authority i.e., Deputy Commissioner, Srinagar, no fruitful purpose would be served to keep this petition pending. Thus, in the peculiar facts and circumstances of the case and also in the light of the stand taken by the respondents, this Court deems it proper to dispose of the writ petition with the consent of learned counsel for the parties.
14. The instant writ petition is disposed of with a direction to the Deputy Commissioner, Srinagar, who is the chairman of the District Level Rent Assessment Committee to reassess the rent

of the property in question in terms of the rules in vogue within a period of two weeks from the date copy of this order is served upon him and payment of the rent will be subject to the decision which is likely to be taken by the concerned Deputy Commissioner.

15. Upon the decision of the Deputy Commissioner, Srinagar, the respondents shall also release the outstanding rent of the property in question in favour of the petitioner within two weeks, thereafter, subject to the production of the requisite documents by the petitioner, the details of which finds mention in paragraph No. 5 of the reply affidavit filed by the respondents. The details of the documents which are required to be produced by the petitioner as under;

- (i) An affidavit to the effect that the person/ persons in whose favour rent has been sanctioned is/ are exclusively the interested party and premises has not been alienated to any other person duly attested by 1 class Magistrate.
- (ii) The 16 digit Bank Account No. along with RTGs/ NEFT/IFC code of his saving bank Account.
- (iii) An attested copy of his saving pass book affixed with photograph.
- (iv) Life certificate once every six months.

16. It is made clear that in case, if the pending rental for the building in question is not released within the aforesaid period, then the petitioner will be entitled to the interest @ 6% from the date the same was payable and denied to the petitioner.

17. As a necessary corollary and in view of the observations made hereinabove, the impugned order No. 1629 of 2015 dated 13.06.2015 is set aside/quashed,

18. Disposed of in the manner as indicated hereinabove.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
01-07-2025
Mubashir

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