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

LPA No. 257/2023 c/w
LPA No. 260/2023

Amir Medical Store, Shopian **…Petitioner/Appellant(s)**
Through Mohammad Ashraf Shah
S/o Ghulam Ahmad Shah
R/o Hergam, Shopian, Aged 64 years

Through: Mr. Z.A. Qureshi, Sr. Advocate with
Mr. Anuraag Verma, Advocate

Vs.

1. **UT of JK Th. Commissioner/Secretary to Government Health & Medical Education Department, Civil Secretariat, Srinagar/Jammu;** **...Respondent(s)**
2. **Director Health Services, Kashmir, Bemina Byepass, Srinagar;**
3. **Medical Officer, District Hospital, Shopian**
4. **Cooperative Fair Price Medical Shop, District Hospital, Shopian Th. Its Proprietor Shakeel Ahmad**

Through: Mr.Waseem Gul, GA for 1 to 4
Mr. Omais Kawoosa, Advocate for 5

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

ORDE R

08.07.2025

Per Sanjeev Kumar-J (oral):

LPA No. 257/2023

1. This intra-court appeal by the appellant arises out of an order and judgment dated 30th November, 2023, passed by the learned Single Judge of this Court ["the writ Court"] in OWP No. 1514/2017 alongwith other clubbed matters, whereby the writ petition filed by the appellant has been dismissed relegating the appellant to the remedy of appeal under the J&K Public Premises (Eviction of Unauthorized Occupants) Act, 1988 ["the Act"].

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2. The impugned judgment, to the extent it has been passed in OWP No. 1514/2017 is assailed by the appellant primarily on the ground that the order impugned in the writ petition i.e. order dated 07.08.2017 passed by the respondent No. 4 with regard to the demand of rent, was not an order passed under the provisions of the Act, and therefore, the writ Court ought not to have relegated the appellant to the remedy of appeal.

3. *Per contra*, Mr. Waseem Gul, learned GA appearing on behalf of the respondents 1 to 4, would submit that the order dated 07.08.2017, impugned in OWP No. 1514/2017 by the appellant, was passed by the Medical Superintendent District Hospital, Shopian, in his capacity as Estate officer under Section 10 of the Act and, therefore, was appealable under Section 12 of the Act.

4. Having heard learned counsel for the parties and perused the material on record, we deem it necessary to first set out Sections 10 & 12 of the Act herein below:

> ***"10. Power to require payment of rent or damages in respect of public premises.***
>
> *(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such installments as may be specified in the order.*
>
> *(2) Where any person is, or has at any time been in unauthorized occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such installments as may be specified in the order.*
>
> *(3) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed.*
>
> *(4) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of*

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a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

12. Appeals.

[12][(1)) An appeal shall lie from every order of the Estates Officer made in respect of any public premises under section 5 or section 7 or section 8 or section 10 to the District Magistrate of the District in which public premises are situate.]

(2) An appeal under sub-section (1) shall be preferred,–

(a) In the case of an appeal from an order under section 5, within twelve days from the date of publication of the order under sub-section (1) of that section;

(b) In the case of an appeal from an order under section 7 or 10 within twelve days from the date on which the order is communicated to the appellant; and

(c) in the case of an appeal from an order under section 8, within twelve days from the date of such order:

Provided that the appellate officer may entertain the appeal after the expiry of the said period of twelve days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of the estate officer, the appellate officer may stay the enforcement of that order for such period and on such condition as he deems fit:

Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made under section 7 for the demolition or removal of such building or other structure or fixture, the appellate officer shall not make any order for the stay of enforcement of such order, unless such security as may be sufficient in the opinion of the appellate officer, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal.

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

(5) The costs of any appeal under this section shall be in the discretion of the appellate officer."

5. From the reading of Section 10, it becomes apparently clear that an Estate officer is entitled in law to require a person in arrears of rent in respect of any public premises to pay the same within a specified period. Undoubtedly, such an order can be passed by the Estate

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officer in respect of occupants of public premises in arrears, after giving them a notice in writing to show cause within the time specified in the notice.

6. Section 12 is clear and unequivocal, and it provides that any order passed by an Estate officer under Section 5 or Section 7 or Section 8 or Section 10 is appealable before the Appellate Officer. Earlier, the District Judge was the Appellate Authority, and due to an amendment made in the Act, the Deputy Commissioner of the concerned District has been conferred with the appellate powers under the Act.

7. In view of the clear provisions of Sections 10 & 12 of the Act and the nature of the order that has been passed by the Medical Superintendent, District Hospital, Shopian, ["Estate Officer"], we are of the considered opinion that the writ Court has rightly relegated the appellant to the remedy of appeal under Section 12 of the Act. We, therefore, find no merit in this appeal, and the same is accordingly **dismissed**, leaving it open to the appellant to immediately approach the Appellate Authority and file an appeal.

8. We, however, make it clear that in case the appellant chooses to file an appeal before the Appellate Authority under Section 12 of the Act, the period spent by the appellant before this Court, i.e. before the Single Bench as well as Division Bench, shall be excluded from the computation of limitation. Needless to say that, notwithstanding whatever has been said by the writ Court or by us in this order, all legal and factual contentions shall remain available to the appellant to be raised in the appeal.

<u>LPA No. 260/2023</u>

1. This intra-court appeal by the appellant arises out of an order and judgment dated 30th November, 2023, passed by the learned Single

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Judge of this Court ["the writ Court"] in OWP No. 82/2014 alongwith other clubbed matters**,** whereby the writ petition filed by the appellant has been dismissed relegating the appellant to the remedy of appeal under the J&K Public Premises (Eviction of Unauthorized Occupants) Act 1988 ["the Act"].

2. Learned counsel for the appellant fairly submits that due to subsequent events, the reliefs claimed in OWP No. 82/2014 have been rendered infructuous, and he only has an issue with regard to the fixation of the rate of rent. The statement of learned senior counsel is taken on record.

3. This appeal is, accordingly, **dismissed** as having been rendered infructuous. Needless to say that, all grounds shall remain available to the appellant to dispute the fixation of rent in respect of the subject land before the appropriate/appellate forum.

(SANJAY PARIHAR) **(SANJEEV KUMAR)**
JUDGE **JUDGE**

SRINAGAR:
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Whether the order is reportable? Yes/No

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