

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

Case No. LPA No. 75/2024 in
OWP No. 502/2009

Reserved on :18.09.2025
Pronounced on :04.03.2026
Uploaded on : 04.03.2026

Whether the operative part or full
judgment is pronounced

Mehraj-ud-Din Peer and Ors.

....Petitioner/Appellant

Through:- Mr. Irshad Ahmad, Advocate,

V/s

UT of J&K and Ors.

.....Respondent(s)

Through:-Mr. Jahingeer Ahmad Dar, GA

CORAM:HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

PER: SINDHU SHARMA-J

1. The present Letters Patent Appeal has been filed against the judgment and order dated 21.02.2024 passed by this Court in OWP No. 502/2009, whereby the writ petition preferred by the appellants came to be dismissed.
2. The appellants are longstanding shopkeepers who had been carrying on their business for several decades in front

of the premises of the Irrigation and Flood Control Department, Sopore. During the process of road widening undertaken by the Town Area Committee, Sopore, the shops of the appellants were demolished, resulting in deprivation of their means of livelihood.

3. Consequent upon the demolition of their shops, the appellants made repeated representations before the concerned authorities seeking allotment of alternative land for rehabilitation. The Government of Jammu and Kashmir, vide Government Order dated 31.12.2004 and Cabinet Decision No. 210/11 dated 30.12.2004, sanctioned allotment of land belonging to the Irrigation and Flood Control Department, Sopore, in favour of the dislocated shopkeepers, including the appellants, subject to certain terms and conditions.

4. Pursuant to the aforesaid Government orders, the appellants raised construction of shops at their own cost and deposited the requisite building permission fee with the Municipal Council, Sopore.

5. For the purpose of fixation of rent of the newly constructed shops, the Superintending Engineer, Hydraulic Circle, Sopore, constituted a Rent Assessment Committee vide letter dated 12.02.2005, directing it to fix rent on the

basis of prevailing market rates with a reasonable increase after every five years.

6. The grievance of the appellants is that the Rent Assessment Committee acted arbitrarily and in violation of the mandate issued to it. It is contended that the appellants were not afforded an opportunity of participation in the assessment process and that the Committee fixed the rent at the rate of Rs. 10/- per square foot per month i.e. with a 20% enhancement after every five years, which was substantially higher than the rent being paid by other shopkeepers in the same locality. The appellants further contend that rent agreements executed by other shopkeepers with the Municipal Council, reflecting much lower rates, were placed on record but were not considered.

7. Aggrieved by the said fixation, the appellants approached this Court by filing OWP No. 589/2006 and thereafter OWP No. 502/2009, challenging the rent fixation as arbitrary, discriminatory, and violative of the principles of natural justice on the ground that no opportunity of hearing was afforded to them.

8. During the pendency of the writ proceedings, this Court, vide order dated 31.03.2021, directed the appellants to deposit rent at the undisputed rate of Rs. 5/- per square foot per month till final adjudication. The appellants

complied with the said direction and furnished affidavits undertaking to abide by the final outcome of the case. The writ petition bearing OWP No. 589/2006 was dismissed on 21.07.2008 by holding as under: -

“...The petitioners have not challenged the findings of the Rent Assessment Committee as such the rent fixed by them cannot now be disputed by the petitioners. No substantial ground has been raised by the petitioners to show how the rent fixed by the Rent Assessment Committee is not proper and is not equivalent to the prevalent market rate.

The petitioners cannot claim parity with other shopkeepers as they have got the shops under a Government Order and the petitioners being beneficiaries of the order are bound by the terms and conditions of the said order.

In the circumstances, I do not find any force in the present petition, which is hereby dismissed.”

9. The appellants have challenged the constitution of rent assessment committee made vide order dated 12.02.2005 and its findings dated 16.07.2005, with a direction to reconstitute them again in OWP No. 502/2009. This petition has been dismissed by the impugned judgment dated 21.02.2024 on the ground that the petitioners have undertaken to pay the rent in respect of the allotted shops at the market value to be assessed by the Rent Assessment Committee and which was already subject matter of litigation and, therefore, it cannot be reagitated.

10. Learned counsel for the appellants submits that despite such compliance, the writ petition was dismissed

vide judgment dated 21.02.2024 on the ground that the issues raised had already been adjudicated in earlier proceedings and could not be re-agitated, and that repeated litigation on the same cause amounted to abuse of the process of law.

11. Subsequent thereto, the respondents issued notices to the appellants for clearance of balance rent in accordance with the fixation made by the Rent Assessment Committee at the rate of Rs. 10/- per square foot per month with a 20% enhancement every five years, with a clarification that the amount already deposited would be adjusted.

12. The appellants have assailed the impugned judgment in the present appeal, contending that the Rent Assessment Committee acted arbitrarily, failed to consider relevant material including prevailing market rents, and violated the principles of natural justice by denying them an opportunity of being heard.

13. The appellants further contend that the rent fixation is discriminatory inasmuch as similarly situated shopkeepers were charged lower rent, and that the learned Single Judge failed to consider these aspects, resulting in grave miscarriage of justice.

14. Per contra, learned counsel for the respondents submits that the allotment and rent fixation were made

strictly in accordance with the Government orders and the terms and conditions governing the allotment, and that the appellants are attempting to reopen issues already settled by this Court.

15. Heard learned counsel for the parties and perused the material available on record.

16. With regard to the principal contention raised by the appellants that the rent fixed by the Rent Assessment Committee is excessive, we find no infirmity in the view taken by the learned Single Judge. It is an admitted position that sanction was accorded to the allotment of land to the appellants vide Govt. Order No. 495-PW(Hyd) of 2004 dated 31.12.2004 on the following terms and conditions: -

- i. Permission of the TAC Sopore is obtained for construction of these shops on the identified land.
- ii. That the shops, which will be constructed by twenty (20) shopkeepers at their own cost will be the property of Irrigation Division Sopore and the shops will be allotted to these dislocated shopkeepers on rent basis.
- iii. That the 20 shops will be constructed of equal size measuring 9'x12' or less. Keeping in view the availability of land and the shops sites will be

allotted to these dislocated shopkeepers by lots and not on pick and choose basis.

- iv. That these shopkeepers will have to execute an agreement with the Department for payment of rent as per prevalent market rate of the town concerned with a reasonable increase after every five years.

17. Pursuant to the order of allotment and after taking possession of the shops, the appellants executed affidavits categorically undertaking that they shall pay rent as per the prevailing market rate of the town, which was to be assessed by the Rent Assessment Committee, with a reasonable enhancement after every five years. The appellants further undertook to abide by the rent so assessed.

18. The Hon'ble Supreme Court in case titled ***Rajasthan State I.D.I.Corp. Ltd. & Anr vs Diamond & Gem Dev. Corp. Ltd. & Anr***, (2013) 5 SCC 470 has observed as under:-

“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.

19. Having voluntarily furnished such undertakings and having accepted the allotment subject to the said terms and

conditions, the appellants cannot now be permitted to turn around and resile from their own commitments. The doctrine of estoppel squarely applies, and the appellants are bound by the undertakings furnished by them.

20. As regards the contention of the appellants that the rent fixation is discriminatory on the ground that similarly situated shopkeepers are being charged a lower rate of rent, the learned Writ Court has rightly rejected the said plea. The plea of discrimination is equally untenable. The Tehsildar Sopore had intimated that shop structure is in the prime location of Sopore town and the prevailing cost of shop location is Rs. 10 lacs per kanal. The record demonstrates that Rent Assessment Committee relied upon the report dated 29.06.2005 submitted by the Executive Engineer, Municipal Council, Sopore, which clearly distinguished between commercial value of shops located on Kupwara Road and those on Nowpora Road. Shops on Kupwara Road were assessed at Rs. 5/- per sq.ft per month, whereas shops on Nowpora Road where the appellants' shops are situated were assessed at Rs. 10/- per sq.ft. per month.

21. It is not disputed that the shops allotted to the appellants are located on Nowpora Road. Therefore, the appellants cannot claim parity with shopkeepers situated in a different locality having distinct commercial potential.

Differential rent fixation based on location, commercial value, and market conditions does not amount to hostile discrimination and is a well-recognised principle in law.

22. The appellants contended that they were not afforded an opportunity of being heard by the Rent Assessment Committee. This argument, though attractive at first instance, does not withstand legal scrutiny.

23. The rent fixation was carried out pursuant to a policy decision and contractual terms accepted by the appellants themselves. The assessment was based on objective market parameters, location, and reports of competent authorities. The appellants have failed to establish any real prejudice caused to them due to the alleged absence of hearing, particularly when they had undertaken to accept the rent as determined by the Committee.

24. The learned Single Judge has rightly held that the appellants were attempting to re-agitate issues which had already been considered in earlier proceedings. Such repeated challenges undermine judicial discipline and amount to abuse of the process of law.

25. In view of the aforesaid discussion, we find no merit in the present Letters Patent Appeal. The appellants, having accepted the allotment of land and having executed undertakings to pay rent as determined by the Rent

Assessment Committee on the basis of prevailing market rates, are estopped from challenging the same at this stage. The plea of violation of principles of natural justice or discrimination is devoid of substance, particularly when the rent has been fixed based on objective criteria, location-specific market valuation, and in accordance with the Government orders governing the allotment.

26. We find no legal infirmity, perversity, or jurisdictional error in the impugned judgment dated 21.02.2024 warranting interference in appellate jurisdiction, as such, the appeal is **dismissed**.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

JAMMU
04.03.2026
Bir

Whether approved for reporting:	Yes/No
Whether approved for speaking:	Yes/No