HIGH COURT OF JAMMU AND KASHMIR AT JAMMU
(Through Virtual Mode)

OWP No. 952/2006

Bishan Dass …. Petitioner(s)

Through:- Mr. A. K. Sawhney, Adv

V/s

State of J&K & ors. …..Respondent(s)

Through:-

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

ORDER

1. By way of instant petition, petitioner seeks the following reliefs :

> "…….the respondents 1, 3 and 4 be directed to consider the application of the petitioner for Vesting of Ownership of the said land/plot to the petitioner under the Act and charge the due rates for the said land under law and expedite the process under the J&K State Lands (Vesting of Rights To Occupants) Act, 2001 and further to direct the respondent No. 2 to pay compensation to the petitioner for the damage cause to the structures of the petitioner and also provide alternate site as assured for the land that has been taken away without following any process of law forcibly and against the spirit of the judgment of the Hon'ble High Court".

2. It is submitted that the petitioner had constructed his residential house at Shiv Colony, Opp. Ravi Tawi Canal, Rama Jammu in the year of 1988. The said colony was earlier called Channi Rama, and later Bawa Colony and now named as Shiv Colony. It appears that

the petitioner alongwith eight others were issued notice for encroachment on the left side of Tawi Canal and for removal of the houses which was coming under the alignment of road.

3. Aggrieved by this, the petitioner alongwith others filed writ petition bearing OWP No. 363/1998 titled *Temple Mahaveer through Ramesh Lal vs. Jammu Development Authority & ors.* This petition was disposed of vide order dated 19.02.2001 with the following directions:-

> "i)…..That the petitioners may if so advised put across their point of view i.e., whether they want to accept or reject the offer made by the JDA whereby the alternative sites have been offered. They would give this offer within a period of four weeks from today.
>
> ii) In case offer given by the J.D.A. is not accepted by the petitioners, then J.D.A. or the authority in whom the land vests would be at liberty to dis-possess the petitioners in accordance with law".

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4. Petitioner has approached this Court after more than five years of the passing of the judgment in OWP No. 363/1995 seeking consideration of his application under the J&K State Land (Vesting of Ownership to the Occupants) Act, 2001 and also pay him compensation for damaged caused.

5. The Hon'ble Division Bench in a judgment dated 09.10.2020 rendered in PIL No. 19/2011 has held that the said J&K State Land (Vesting of Ownership to the Occupants) Act, 2001 has been declared as unconstitutional, as such, no direction for consideration/regularization of the land of the petitioner can be granted.

6. The next relief sought is grant of compensation in the shape of cash/plot at Bahu Fort for demolition of the house of the petitioner for which he has approached this Court after a delay of almost five years.

7. The respondent No. 2, in his objections, however, has stated that due to widening of road, land falling under Khasra No. 436 was transferred to Jammu Development Authority and the petitioner had constructed his residential house upon the land measuring 04 marlas. As many structures constructed on the JDA land were coming within the alignment of the road and the respondents-JDA rehabilitated the persons whose whole structures have come within the alignment of road and where the encroachment was removed by the respondent which stood constructed on JDA Land. The petitioner is still residing in his house constructed on the JDA land. The respondent-JDA has categorically stated that the petitioner had not removed the encroachment, therefore, the petitioner was not entitled for any rehabilitation.

8. In view of the aforesaid facts and the stand taken by the respondent-JDA, the petitioner is not entitled to any relief of compensation as he is still residing in the house which has been constructed over the encroached land. In view of the aforesaid, there is no merit in this writ petition which is, accordingly, **dismissed** alongwith connected application(s) if any**.**

(Sindhu Sharma)
Judge

JAMMU
24.12.2020
Ram Murti

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

SUNIL KUMAR
2021.02.02 15:09
I attest to the accuracy and
integrity of this document