Serial No.06

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 620/2013 c/w
WP(C) No. 1298/2021

Niranjan Singh .....Appellant(s)/Petitioner(s)

Through: Mr. Karman Singh Johal,Advocate.

vs

State th. Custodian Property & ors. ..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG with
Ms. Sagira Jaffar, Advocate.
Mr. Ashok Sharma, Advocate.
Mr. K. S. Puri, Advocate.
Mr. Adarsh Bhagat, GA.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER(ORAL)
19.11.2026

OWP No. 620/2013

1. The predecessor-in-interest of the private respondents, namely, Mehar Singh, preferred a revision petition before the Custodian Evacuee Property, Jammu, challenging the order dated 05.05.1997 passed by the Assistant Custodian, R.S. Pura, whereby the subject land, measuring 16 kanals (comprising 1 kanal under Survey No. 902 and 15 kanals under Survey No. 906), situated at Village Chakroi, Tehsil R.S. Pura, was regularized in favour of the petitioner.

2. Order dated 05.05.1997 was set aside by the Custodian Evacuee Property, Jammu in terms of order dated 28.02.2004 and matter was remanded to Assistant Custodian, R. S. Pura.

3. The petitioner assailed the order dated 28.02.2004 before the Divisional Commissioner, Jammu with powers of the Deputy Custodian General and in

terms of order dated 29.12.2006, the said Revision petition too came to be dismissed.

4. Aggrieved by the same, the petitioner filed another revision petition before the J&K Special Tribunal Jammu, which too came to be dismissed in terms of order dated 25.02.2010. As such, order dated 28.02.2004 has attained finality.

5. As the matter was remitted to the Assistant Custodian, Tehsildar, R.S. Pura in terms of order dated 28.02.2004 passed by the Custodian, Evacuee Property, the Assistant Custodian Evacuee Property in terms of order dated 27.07.2011 observed that order dated 05.05.1997 being non-existent should be ignored and directed the handing over of the possession of the subject evacuee property to the predecessor-in-interest of the private respondents (who, for convenience, hereinafter shall be referred to as "allottee").

6. This order became the subject matter of another revision petition preferred by the petitioner, but the petitioner remained unsuccessful as the said revision petition came to be dismissed by the Custodian Evacuee Property in terms of order dated 20.04.2012.

7. The order of 20.04.2012 was assailed by the petitioner through the medium of another revision petition, but yet again the petitioner remained un-successful as the said revision petition too came to be dismissed in terms of order dated 26.04.2013 passed by the J&K Special Tribunal. This is how this petition has landed before this Court through the medium of which the petitioner has assailed the order dated 26.04.2013, whereby the order dated 20.04.2012 passed by respondent No. 2 and order dated 20.07.2012 passed by respondent No. 3 have been upheld.

8. The order impugned has been assailed by the petitioner primarily on the ground that respondent No. 4 was bound to take possession within six months from the date of allotment and failure on his part to take possession within six months, has rendered his allotment liable for cancellation in accordance with Rule 5 and 6 of Cabinet order No. 578-C of 1954, but the authorities below have wrongly held that the protection of Rule 6 was available to the predecessor-in-interest of the private respondents.

9. Counter-affidavit has been filed by the private respondents, stating therein that their predecessor-in-interest i.e. the allottee, was a refugee of 1947, residing in Village Dhammi Tehsil Palandri, District Poonch and due to Indo-Pak conflict of 1947, he was compelled to leave his native place and crossed over to this side of J&K State. As such, he became a refugee of 1947. Being a displaced person, form Alif was issued in his favour by the PRO, Jammu in terms of the Cabinet order 578-C of 1954. He was allotted 16 Kanals of land situated at Village Chakroi, Tehsil R. S. Pura, District Jammu as mentioned above and the possession of the same was handed over to him on 09.09.2011, equivalent to English Calendar year 1954. It is stated that as the predecessor-in-interest of the private respondents was in Indian Army, he allowed one Dulla S/o Vadawa Sansi to cultivate the land because he was exempted from personal cultivation of the land in terms of para 6 of Cabinet order No. 578-C of 1954. To substantiate this contention, the private respondents have placed on record the Girdawari of the relevant year. It is the stand of the private respondents that the petitioner obtained the possession of the subject land from the tenant of allottee by illegal means in his absence. And, as such, after his retirement, when he came to know that the land has been obtained by the petitioner through illegal means and even

got the same regularized in his favour by the Assistant Custodian, R. S. Pura in terms of order dated 05.05.1997, he assailed the same before Custodian Evacuee Property, Jammu. The private respondents have mentioned the history of litigation, which led to the passing of the order impugned by the learned Special Tribunal.

10. Respondent No.2 has also filed the response opposing the maintainability of writ petition.

11. In rejoinder to the counter-affidavit filed by respondent Nos. 4 and 5, the petitioner has stated that when the land was allotted, the allottee was not in the Defence Forces and arguendo, the petitioner was serving in Defence Forces at the time of allotment/delivery of possession of the land in question, he was under an obligation to get the said land cultivated through hired labourer, but the same was not done and, as such, he had forfeited his right to occupy the land in question.

12. Heard learned counsel appearing for the parties and perused the material on record.

13. There is no dispute that the order dated 05.05.1997, whereby the petitioner's possession was regularized by the Assistant Custodian, R.S. Pura was set aside by the Custodian Evacuee Property, and the matter was remanded to the Assistant Custodian (Tehsildar), R.S. Pura. The said order was challenged before the Divisional Commissioner and subsequently before the J&K Special Tribunal, both unsuccessfully. Consequently, the quashing of the order dated 05.05.1997 attained finality in the earlier round of litigation. In the subsequent order dated 27.07.2011, the Assistant Custodian (Tehsildar), R.S. Pura, rightly concluded that no valid order dated 05.05.1997 existed, observing that no such order had been passed by the

Tehsildar and that the entry was instead incorporated into the records in connivance with the revenue field agency by taking advantage of the allottee's absence. In absence of any valid order, the petitioner's status remains that of an unauthorized occupant of evacuee property allotted to the original allottee.

14. In this round of the litigation, the petitioner has thrown challenge to order dated 27.07.2011 passed by the Assistant Custodian R. S. Pura, primarily on the ground that it was incumbent on the part of the allottee to get the possession within the period of six months of allotment and having failed to do so, the order dated 27.07.2011 could not have been passed by the Assistant Custodian Tehsildar, R. S. Pura.

15. The counter-affidavit filed by the private respondents reveals that possession was taken over by the original allottee on 09.09.2011 (Bikrami), corresponding to the year 1954 of the Gregorian calendar. This fact is duly substantiated by the possession receipt dated 09.09.2011 (Bikrami) regarding the handing over of the subject land to the allottee, issued by the Deputy PRO, Jammu. Further, the Girdawaris for the year 1967 reveal that the land was being cultivated by the allottee through Dulla as his tenant-at-will, since the allottee could not personally cultivate the land on account of serving in the defence forces.

16. Mr. Karman Singh Johal, learned counsel for the petitioner has tried to persuade this Court that the allottee was not in Defence Forces and further the land was not cultivated within a period of six months from obtaining/ delivery of the possession, as such, the order impugned dated 27.07.2011 could not have been passed.

17. Private respondents have placed on record the Army Discharge Book and IAF discharge book to establish that the original allottee namely, Mehar Singh served in the Indian Army from 15.04.1948 to 22.04.66 and in the Indian Air Force from 01.06.1970 to 30.04.1983. Thus, the petitioner has no case on merits.

18. All the contentions raised by Mr. Johal, learned counsel are attractive at first blush, yet they are noted only to be rejected. These grounds cannot be invoked to protect an illegal and unauthorized occupation, as it is the specific case of the allottee and his successors-in-interest that the petitioner unlawfully took possession of land allotted to the original allottee, more particularly since the order dated 05.05.1997, pursuant to which the petitioner's possession was regularized, has already been set aside by the Custodian, Jammu, and that order has attained finality.

19. Otherwise also, the grounds urged by the petitioner to protect his illegal possession can be invoked only by the statutory authorities for cancelling an allotment, and the petitioner, being a mere trespasser, cannot be permitted to take advantage of such contentions merely to perpetuate his unauthorized occupation.

20. This court has examined the orders passed by the statutory authorities and the said authorities have rightly determined the controversy, in fact leaving no scope for interference by this court. Concurrent findings of fact have been consistently recorded by the authorities below. In exercise of its power of judicial review under Article 226 of the Constitution of India, this Court cannot sit as an appellate or revisional court, particularly when the statutory authorities have rightly determined the controversy. It would be apt to take note of the judgment of the Hon'ble Apex Court rendered in **Central**

Council for Research in Ayurvedic Sciences v. Bikartan Das, (2023) 16 SCC 462, wherein, it has been held as under:

> **"63.** Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. **To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.**
>
> **64.** A writ of certiorari, being a high prerogative writ, is issued by a superior court in respect of the exercise of judicial or quasi-judicial functions by another authority when the contention is that the exercising authority had no jurisdiction or exceeded the jurisdiction. It cannot be denied that the tribunals or the authorities concerned in this batch of appeals had the jurisdiction to deal with the matter. However, the argument would be that the tribunals had acted arbitrarily and illegally and that they had failed to give proper findings on the facts and circumstances of the case. **We may only say that while adjudicating a writ application for a writ of certiorari, the court is not sitting as a court of appeal against the order of the tribunals to test the legality thereof with a view to reach a different conclusion. If there is any evidence, the court will not examine whether the right conclusion is drawn from it or not. It is a well-established principle of law that a writ of certiorari will not lie where the order or decision of a tribunal or authority is wrong in matter of facts or on merits.** (See :*R.* v. *Nat Bell Liquors Ltd.* [*R.* v. *Nat Bell Liquors Ltd.*, (1922) 2 AC 128 (PC)])"
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> (emphasis added)

21. Mr. K. S. Puri, learned counsel appearing for the private respondents is right in his submissions that there are six concurrent findings recorded by different authorities in the hierarchy under the J&K Evacuees'

(Administration of Property) Act, Samvat 2006, and that the present petition is nothing but an abuse of the process of law.

22. In view of the above, though this petition deserves to be dismissed with costs by taking lenient view of the matter, the present petition is dismissed without costs.

23. After this Court dismissed this petition, learned counsel for the petitioner requested that 15 days' time be granted to the petitioner to assail the order passed by this Court and till date, the parties be directed to maintain status quo. The request is not opposed by Mr. Puri, learned counsel for the private respondents.

24. Accordingly, the parties shall maintain status quo for 15 days from the date of uploading of order.

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25. As the connected petition has been dismissed by this Court, Mr. Ashok Sharma submits that petitioner be permitted to withdraw this petition to pursue the matter before the authorities in view of the response filed by them.

26. **Disposed of** accordingly.

(RAJNESH OSWAL)
JUDGE

Jammu
19.11.2026
Neha-1

Whether the **judgment** is reportable: **YES**

Neha Kumari
2026.11.21 15:31
I attest to the accuracy and
integrity of this document