Serial No.07
Regular Cause List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

LPA 104/2024 in[OWP 978/2009]
CM(2627/2024)

HAMEEDA SHAFI MIR AND ANR. …Appellant/Petitioner(s)

Through: Mr. Z. A. Qureshi, Sr. Advocate with
Mr. Muazzam Dar, Advocate.

Vs.

UNION TERRITORY OF J AND K AND ORS. (CUSTODIAN EVACUEE PROPERTY). ...Respondent(s)

Through: Mr. Mohsin Qadiri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel
Mr. N. A. Beigh, Sr. Advocate with
Mr. Sofi Manzoor, Advocate.
Mr. A. Hanan, Advocate vice
Mr. Z. A. Shah, Sr. Advocate

CORAM:
HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

ORDER
05.11.2026

1. Impugned in this intra-court appeal filed under Clause 12 of the Letters Patent is an order and judgment dated 20th of March 2024 passed by the learned Single Judge of this Court in OWP No. 978 of 2009 titled *Mohammad Shafi Butt vs. State of Jammu & Kashmir and Others*, whereby the learned Single Judge has dismissed the writ petition filed by the appellant, having found the same devoid of any merit.

2. The impugned judgment is assailed on multiple grounds. However, before we advert to the grounds of challenge, we deem it appropriate to briefly state a few facts as are germane to the disposal of the controversy raised in this appeal.

3. Way back in the year 1996, one custodian shop situated at Haft Chinar was allotted for commercial purposes by the Department of Custodian to the appellant vide agreement dated 22nd of March 1996. The lease of the shop was for a period of one year from the date the lessee would take possession of the shop. The grant of lease was subject to the deposit of a premium of Rs. 10,000/- and payment of rent at the rate of Rs. 500/- per month. The appellant, fulfilling all the conditions, entered into possession of the shop.

4. Meanwhile, one Mohammad Shafi Butt challenged the allotment of the shop made in favor of the appellant in OWP No. 104 of 1996. Vide interim order dated 26th of April 1996, the allotment was stayed, as a result whereof the allotted shop was taken back by the Custodian and could not be put to use by the appellant.

5. The writ petition remained pending in this Court for adjudication for several years and was ultimately dismissed vide judgment dated 18th of February 2008. The writ petition was dismissed primarily on the ground that the writ petitioner, Mohammad Shafi Butt, who had challenged the allotment of the appellant herein, had no right, title, or interest in the shop, and therefore lacked locus standi to challenge the allotment.

6. By the time the writ petition (OWP No. 104 of 1996) was disposed of by this Court, the lease period for which the shop in question had been allotted to the appellant had expired.

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7. Following the dismissal, the Department of Custodian issued an auction notice on 25th of October 2008 for allotment of the shop on the basis of the highest premium. Respondent Nos. 4 and 5 participated in the auction and, being the highest bidders, were allotted the shop vide order dated 10th of November 2008 for a period of 20 years, subject to the payment of a premium of Rs. 13.10 lakhs in one go.

8. The allotment order remained in operation and was capable of being implemented till 30th of October 2009, when, in a writ petition filed by the appellant challenging the allotment made in favor of respondent Nos. 4 and 5 (OWP No. 978 of 2009), an interim order of status quo was passed on 30th of October 2009. It appears that neither was the amount of premium deposited nor was the possession of the shop in question taken over by executing a formal lease deed by respondent Nos. 4 and 5, though they had ample time from 10th of November 2008 till 30th of October 2009 to do so.

9. Be that as it may, the fact remains that the challenge to the allotment of respondent Nos. 4 and 5 made by way of auction, raised by the appellant in OWP No. 978 of 2009, was ultimately turned down by the Writ Court vide the order and judgment impugned in this appeal. The writ petition filed by the appellant was dismissed primarily on the ground that the lease of the shop in question, allotted on 22nd of March 1996 for a period of one year, had expired during the pendency of OWP

No. 104 of 1996, and that there was no specific direction issued by this Court in its judgment dated 18th of February 2008 permitting the appellant to enjoy possession of the shop for the said lease period of one year.

10. The appellant is aggrieved and has called in question the impugned order primarily on the ground that the Writ Court has failed to appreciate that, upon the dismissal of OWP No. 104 of 1996, filed by one Mohammad Shafi Butt challenging the allotment of the shop in question in favour of the appellant, the appellant was, as a matter of right, entitled to be put back into possession of the shop and use it for the full term of the lease.

11. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Writ Court does not suffer from any legal or factual infirmity warranting interference in the exercise of appellate jurisdiction.

12. It is true that vide lease agreement dated 22nd of March 1996, the shop was allotted by the Custodian in favour of the appellant for a period of one year, which period was to expire on 31st of March 1997. The appellant was also put in possession of the shop. But for the litigation initiated by Mohammad Shafi Butt, the appellant would have enjoyed the possession and used the shop in question for the one-year period envisaged under the lease agreement dated 22nd of March 1996.

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13. However, Mohammad Shafi Butt, who occupied an adjacent shop, challenged the allotment in OWP No. 104 of 1996. On 26th of April 1996, a Single Bench of this Court passed interim directions staying the operation of the allotment and directed the Custodian to take over the shop. Pursuant to the said directions, the Custodian took over possession of the shop allotted to the appellant and kept the same under its lock and key. It therefore, remained in the possession of the Custodian till the writ petition was disposed of on 18th of February 2008.

14. Ordinarily, having regard to the nature of controversy involved in OWP No. 104 of 1996, the Writ Court ought to have allowed the appellant to use the shop in question for the lease period, as he was prevented from using the shop solely because of an interim order passed by the learned Single Judge of this Court disposing of OWP No. 104 of 1996. However, no such direction was issued by the learned Single Judge while disposing of OWP No. 104 of 1996 finally.

15. After the dismissal of OWP No. 104 of 1996, the shop, which was admittedly in the possession of the Custodian was put to public auction, in which respondent Nos. 4 and 5 emerged as the highest bidders. On conclusion of the auction process, the shop in question was allotted to respondent Nos. 4 and 5 on 10th of November 2008, subject to the deposit of a premium of Rs. 13.10 lakhs and the execution of a lease agreement prior to entering into possession.

16. For almost a year, the allotment letter was not implemented, inasmuch as respondent Nos. 4 and 5 neither deposited the premium of Rs. 13.10 lakhs as envisaged under the allotment letter nor executed any formal lease agreement. In the meantime, in the writ petition that was disposed of in terms of the judgment impugned, an interim order of status quo came to be passed on 30th of October 2009.

17. In the given fact scenario, we are of the considered opinion that the shop in question can neither be handed over to the appellant for a lease period of one year as is contended by the learned counsel appearing for the appellant nor can it now be given to respondent Nos. 4 and 5, who have missed the bus by failing to deposit the premium in time and execute a formal lease deed in this regard. A mere allotment order, without deposit of the requisite premium and execution of a formal lease agreement, confers no indefeasible right upon respondent Nos. 4 and 5 to claim possession and enjoyment of the property for the lease period envisaged under the allotment letter.

18. The auction took place in the year 2008, and we are now in the year 2024. Much water has flown since. The market value of the property has soared many times over, and it would be totally inequitable to put either party in possession of the shop on the basis of a lease agreement executed in favor of the appellant back in 1996 or an allotment letter issued in favor of respondent Nos. 4 and 5 in 2008. The litigation which is initiated with

respect to the allotment of the shop in question has thus become a *fait accompli*.

19. In view of the aforesaid, this appeal is disposed of in the following terms:

I. The Department of Custodian Evacuee Property is directed to refund the amount, whatever received, to the appellant as well as to respondent Nos. 4 and 5 within a period of four (4) weeks from today.

II. The Custodian Department shall put the shop in question to auction afresh.

III. Needless to say, both the appellant as well as respondent Nos. 4 and 5 shall be entitled to participate in the fresh auction and compete for the allotment of the shop on the basis of the highest bid.

20. Disposed of as above.

(MOHD YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR
05.11.2026
"Shaista-PS"