

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on: 01.11.2023
Pronounced on: 08.11.2023.**

Case No. :- OWP No. 778/2014

1. Director, Estates Department, Jammu.
2. Dy. Director Estates, Estates Officer,
Jammu.

.....Petitioner

Through: Mr. KDS Kotwal, Dy. AG

Vs

1. Avtar Krishan
S/o Niranjan Nath Bhat
R/o Q. No. 13-F Company Bagh,
Jammu.
2. Rayees Mairaj,
Computer Assistant, Personal
Section, Hon'ble Chief Minister,
Srinagar/Jammu.

..... Respondent(s)

Through: None.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

PRAYER OF THE PETITION:

1. Through the medium of the present writ petition, the petitioner has sought for the following reliefs:
 - (i) **To quash the judgement/order dated 31.10.2013 passed by the Court of learned Principal District Judge, Jammu in file No. 28/Misc. Appeal whereby the learned District Judge has quashed Order No. DDE/J/202-04 dated 24.04.2012 and**

- (ii) **Writ of mandamus, directing the respondent No. 1 to vacate quarter No. 13-F Company Bagh immediately and to pay rent for the premises under his unauthorized occupation w.e.f., 01.04.2011 till the date of vacation of premises @ Rs. 2500/- per month as per Govt. Order No. 210 EST of 2000 dated 22.08.2022 in accordance with the orders passed by the High Court in OWP No. 345/2012;**
- (iii) **To direct payment of exemplary costs in view of the peculiar facts and circumstances of the case.**

BRIEF FACTS:

The facts leading to the filing of the instant writ petition are as under:

2. The respondent No. 1 was a Government employee and was allotted Government Quarter No. 13-F Company Bagh vide Order No. 33-DE of 2004 dated 19.01.2004 for a period upto end of April 2004. The respondent No. 1 continued to be permitted to retain the aforesaid accommodation till he retired in Feb. 2011.
3. The respondent No. 1 after his retirement did not vacate the Quarter as such a notice under Section 4(1) of the Jammu and Kashmir Public Premises (Eviction of Unauthorized Occupants) Act, 1988 (for short '**Act of 1988**') was issued to him vide No. DDE/J/73 dated 06.03.2012.
4. The aforesaid notice was challenged by the respondent No. 1 before this Court by filing OWP No. 345/2012 titled Avtar Krishan Bhat Vs. State of J&K & ors. The said writ petition was

disposed of by the Hon'ble High Court vide Order dated 14.03.2012 directing the respondent in the writ petition to allow the petitioner to occupy the government accommodation for a period of 4 months from the date of order and to vacate the same thereafter. Further direction was issued to the petitioner to pay arrear of rent. For facility of reference, the operative portion of the order dated 14.03.2012 is reproduced as under:

“In the given circumstances, I deem it proper to dispose of this petition by directing the official respondents to allow the petitioner to occupy the aforesaid Government accommodation for a period of four months from today, who shall thereafter vacate the same. Petitioner is directed to pay arrears of rent, if any, as on date as also rent for next four months, to the respondents.”

5. In pursuant to the directions passed by this Court in OWP No. 345/2012, the respondents handed over the vacant possession of Quarter in question to the petitioner but the petitioner therein did not deposit the arrears of rent which were to be deposited in terms of the direction passed by this Court. Consequently, the petitioner No. 1 herein sent a rent notice to the respondent. The rent has been fixed in accordance with Government Order No. 210 Est of 2000 dated 22.08.2000. The said order was challenged by the respondent No. 1 before the court of learned District Judge, Jammu by way of appeal and the learned District Judge was pleased to pass interim direction on 14.06.2012 directing maintenance of status quo.

6. The learned Principal District Judge, Jammu allowed the appeal filed by the respondent herein and passed the order dated 31.10.2013 which is impugned in the present petition.

GROUND:

7. The petitioners have challenged the impugned order dated 31.10.2013 passed by the learned Principal District Judge, Jammu on the grounds, **firstly**, that the learned Principal District Judge, Jammu by way of the order impugned has set aside the judgment of this court whereby this Court was pleased to dispose of the writ petition filed by the respondent by permitting him to remain in occupation for a period of 4 months from the date of order and vacate the same thereafter and was also directed to pay the arrear of rent if any and also rent for the next four months. **Secondly**, the learned Principal District Judge without considering the facts in its correct perspective has passed the impugned order quashing communication dated 24.04.2012 and restraining the petitioners from evicting respondent No. 1 herein from quarter in question. **Thirdly**, the learned court below did not appreciate that the scope of the powers of the appellate court under Section 12 of the J&K Public Premises (Eviction of unauthorized Occupants) Act, 1988 is very limited and is confined to the examination as to whether due process of law has been adopted and whether the provisions of

the Act have been followed. **Fourthly**, the powers are vested in the appellate authority to decide the appeals under the Act in accordance with law and rules and not in derogation to the same.

8. Objections also stand filed by the respondent No. 1 wherein it is stated that due to prevailing circumstances in the Kashmir valley, the house of the respondent No. 1 who belongs to a minority community was set ablaze by the militants at the relevant point of time and the whole families of the minority community including that of the respondent No.1's family migrated to Jammu and were also registered as Migrant. The respondent No. 1 being an active Govt. employee allotted accommodation at Nehru Market, Jammu and after some period i.e., in the year 2004, the Estates Department changed the accommodation of the respondent No. 1 and was allotted the accommodation at Company Bagh, Jammu.
9. It is also stated in the objections that the respondent No. 1 retired in the year 2011. In compliance to the directions of the Director Estates Jammu, respondent No. 1 and other retired migrant employees submitted their affidavits wherein they have stated that they have no house/flat in Jammu Division and outside the State.
10. It is urged in the objections that the Govt. through Revenue, Relief and Rehabilitation Department Civil Secretariat, Jammu has invited the attention of the petitioner No. 1 to the minutes of

meeting held under the Chairmanship of concerned Minister on 12.12.2011 and directed the petitioner No. 1 to maintain status quo in case of respondent No. 1 and not to disturb him till he is suitably adjusted at Jagti among others vide Communication dated 14.03.2012.

11. It is further urged in the objections that before the Hon'ble Supreme Court of India the Govt. of J&K through its Chief Secretary has filed an affidavit/undertaking that the Govt. would provide such facilities to all the Kashmiri retired Govt. migrant employees till they are residing at the present place. On the basis of the said affidavit/undertaking, the Hon'ble Supreme Court of India disposed of the matter pending before it on 27th of October, 2009 by observing that State shall take all endeavours to rehabilitate the person who have been victim of terrorism and till the State is able to rehabilitate and provide the appropriate accommodation to the appellants therein, they shall continue to possess the accommodation which are in their respective possession on this date.
12. It is further submitted in the objections that in compliance to the directions of the Hon'ble Supreme Court, the Govt. of J&K agreed to allot accommodation at newly constructed quarters at Jagti which were constructed only for the purpose of accommodating the Kashmiri migrants including the registered migrant retired Govt. employees and till the said accommodation

is allotted, the retired Govt. migrant employees who are holding the Govt. accommodation shall not be dislodged from the govt. accommodation which has been allotted to them during their active service till further orders.

13. It is stated in the objections that aggrieved retired central Govt. migrant employees who were holding the Govt. accommodation at Delhi during their active service also filed a number of writ petitions before the Delhi High Court against their illegal eviction and the High Court of Delhi has disposed of one of the petitions by observing that the impugned orders cancelling the allotment of the petitioners and the orders of eviction are set aside and direction was issued to the respondents to make all endeavours to rehabilitate and resettle the petitioners making provisions for appropriate accommodation for them. Till such time, the respondents are able to provide alternative accommodation to the petitioners and their family members anywhere in Delhi, the petitioners shall be allowed to retain and occupy the allotted accommodation subject to payment of normal licence fees.
14. A stand is taken by the respondent no. 1 in the objections that the respondent No. 1 is also a retired migrant Govt. employee and is fully covered by the law laid down by Apex Court and various High Courts.
15. Heard learned counsel for the petitioners at length and perused the record. There is no representation on behalf of the

respondents. However, the learned counsel for the petitioners submits that the interim direction passed by this Court vide order dated 10.6.2014 is harshly working against the respondents and keeping in view the urgency projected by the learned counsel for the petitioners, the matter was heard for its final disposal.

16. This is a very peculiar case where the learned Principal District Judge, Jammu by virtue of order impugned dated 31.10.2013 has set aside the judgment of the higher court i.e., High Court, whereby, this Court was pleased to dispose of the writ petition filed by respondent no. 1 by permitting him to remain in occupation for a period of four months from the date of order and vacate the same thereafter besides directing him to pay arrears of rent, if any, and also rent for next four months which is beyond the jurisdiction of the learned court below. Even otherwise also, the order impugned has been passed by the Principal District Judge, Jammu in exercise of powers under Section 12 of the Act of 1988 against the notice dated 24.4.2012 which cannot be construed as an order of eviction of respondent No. 1 issued by the respondent No. 2. For facility of reference, Section 12 of the Act of 1988 is reproduced as under:

“Power to obtain information.- If the estate officer has reason to believe that any persons are in unauthorized occupation of any public premises, the estate officer or any other officer authorized by him in his behalf may require those persons, or any

other person to furnish information relating to the names and other particulars of the persons in occupation of the public premises and every person so required shall be bound to furnish the information in his possession.”

17. A bare perusal of the order impugned in the appeal would reveal that a communication came to be addressed to respondent No. 1 intimating him the amount of rent due to him in conformity with the judgment passed by this Court dated 14.3.2012 in OWP No. 345/2012 which, by no stretch of imagination, can be construed as an order of eviction. Thus, the notice dated 24.4.2012 which was impugned before the learned Principal District Judge, Jammu in the appeal filed u/s Section 12 of the Act of 1988 was an intimation to the respondent no. 1 to pay the rent of the unauthorized use and occupation of the quarter failing which it was conveyed in an unequivocal terms that the proceedings under law shall be initiated against him for recovery of outstanding rent at his risk and cost. The respondent No. 1 instead of complying with the directions issued by the Dy. Director Estates, Jammu has rushed to the appellate court and filed the appeal on false and flimsy grounds after having availed the remedy before this Court. The respondent no. 1 while filing the appeal under section 12 of the Act of 1988 has sought a direction to restrain the petitioners from evicting the respondent No. 1 till the Govt. rehabilitate and provide alternate accommodation to him by declaring notice impugned as null and

void. The learned appellate court while passing the impugned judgment has quashed the impugned communication dated 24.4.2012 by exceeding its jurisdiction and in a way upsetting the order passed by a higher court i.e. this Court by restraining the petitioners from evicting the respondent No. 1 from Govt. accommodation by passing a blanket restraint order which is not sustainable in the eyes of law and the said order is in direct conflict with the order passed by this Court.

18. The object of the Act of 1988 is to provide for eviction of unauthorized occupants from public premises and for certain incidental matters. The allotment and retention of the Govt. accommodation by the Govt. employee is also governed by the regulations framed by the Govt. in this regard being The Jammu and Kashmir Estates Department (Allotment of Govt. Accommodation) Regulation, 2004 as also the provisions of Civil Services Regulation.
19. From a bare perusal of the regulations framed by the Government and also the provisions of Civil Services Regulation, it is manifestly clear that a Govt. employee on his retirement can retain govt. accommodation for a period of one month and thereafter, he has no right whatsoever to retain the same. The Govt. employee has no right to retain govt. accommodation has already been set at rest by the Apex Court in case titled "**S.D.**

Bandi Vs. Divisional Traffic Officer KSRTC". In the paragraph 29 of the said judgment, the Apex Court has held thus:

"29) It is unfortunate that the employees, officers, representatives of people and other high dignitaries continue to stay in the residential accommodation provided by the Government of India though they are no longer entitled to such accommodation. Many of such persons continue to occupy residential accommodation commensurate with the office(s) held by them earlier and which are beyond their present entitlement. The unauthorized occupants must recollect that rights and duties are correlative as the rights of one person entail the duties of another person similarly the duty of one person entails the rights of another person. Observing this, the unauthorized occupants must appreciate that their act of overstaying in the premise directly infringes the right of another. No law or directions can entirely control this act of disobedience but for the self realization among the unauthorized occupants."

20. The order passed by the appellate court even otherwise is not sustainable in the eyes of law as the scope of power of the appellate court is very limited and confined to the examination as to whether due process of law has been adopted and whether the provisions of the Act of 1988 has been followed. A bare perusal of the judgment passed by the appellate court reveals that the appellate court has not only exceeded its jurisdiction by upsetting the order passed by the higher court i.e., High Court but has also issued directions by quashing the impugned communication dated 24.4.2012, as if, the appellate court is

exercising the power as a writ court exercising the power under Article 226 of the Constitution of India.

21. I have gone through the order passed by the appellate court which is based on misconception and mis-appreciation of the judgment passed by the Apex Court in case titled "J.L Koul and ors. Vs. State of J&K & ors, Civil Appeal No. 3809 of 2005 wherein the Apex Court held thus:

"In view of the above affidavit/undertaking given by the State and after hearing Mrs. Purnima Bhat Kak, learned counsel for the appellants and Mr. Anis Suhrawardy, learned counsel for the State, we dispose of the appeal with a pious hope that State shall take all endeavours to rehabilitate the persons who have been victim of terrorism and till the State is able to rehabilitate and provide the appropriate accommodation to 31 appellants-retirees/oustees, they shall continue to possess the accommodations which are in their respective possession on this date."

22. The respondent No. 1 was not a party before the Apex Court in the aforesaid case and thus, he cannot derive any benefit out of the said judgment which was confined to 31 appellants/retirees who were parties before the Court. The aforesaid judgment was examined by this Court in OWP No. 433/2011 wherein, the Court has held that a Govt. employee on his retirement ceases to have right to retain Govt. accommodation beyond one month and becomes an unauthorized occupant.

23. In case titled **“R.N. Razdan vs. State of J&K & ors” OWP No. 433/2011**, this court has observed as under:

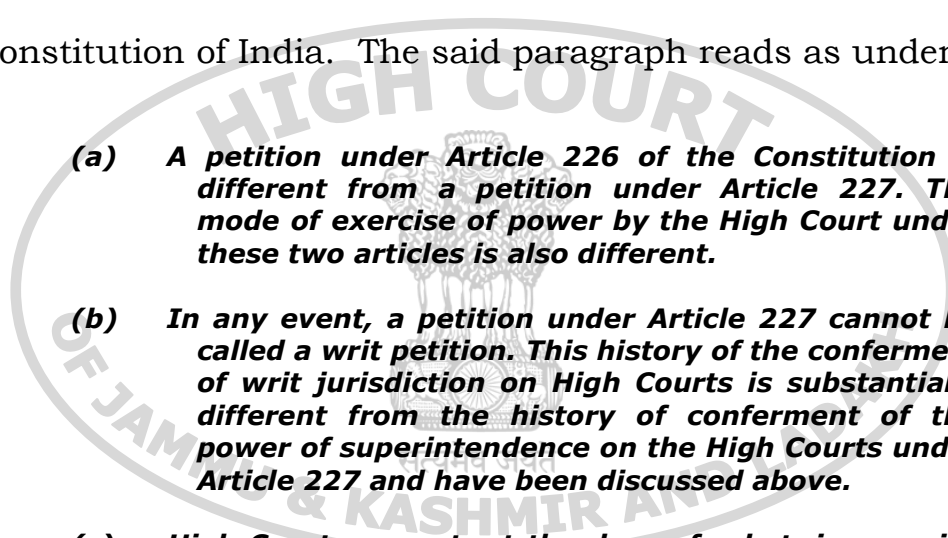
“Having lost his right to enjoy the Government accommodation with his retirement from service, the petitioner cannot question the Director Estate’s Order allotting the premises in question to respondent No. 6.

The petitioner has remained in unauthorized occupation of the premises for over a period of four years of his retirement. He is, therefore, disentitled to invoke the Extra Ordinary Equitable Writ Jurisdiction of the Court to perpetuate his illegal occupation of the Government Quarter, in that, neither does he possess any enforceable right in respect of the Quarter nor would it be in the interests of justice, to permit perpetuation of his unauthorized occupation.”

24. The order impugned if permitted to remain as it is and operative would have far reaching consequences and have serious repercussions and would vest a right in the respondent No. 1 to retain the Govt. accommodation in the shape of quarter no. 13-F Company Bagh for all times to come which is not permissible under rules. It goes without saying that the power vested with the appellate authority to decide the appeals under Section 12 of the Act of 1988 is in accordance with rules and law and not in breach of the same. The order impugned, on the other hand, has been passed contrary to the rules governing the field and is liable to be set aside. The court of learned Principal District Judge, Jammu is a court subordinate to the High Court and is amenable

to the supervisory jurisdiction of this Court and this court while exercising the powers under Article 227 of the Constitution of India can set aside the orders passed by the subordinate courts if the same is apparently erroneous and perverse on the face of it.

25. In paragraph 49 of the judgment in **Shalini Shyam Shetty and another vs. Rajendra Shankar Patil, (2010) 8 SCC 329**, the Apex Court on a complete analysis of various judgments rendered by it, carved out the principles to be followed by the High Courts while exercising jurisdiction under Article 227 of the Constitution of India. The said paragraph reads as under:

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- (a) ***A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.***
- (b) ***In any event, a petition under Article 227 cannot be called a writ petition. This history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.***
- (c) ***High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.***
- (d) ***The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh and the principles in Waryam Singh have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.***
- (e) ***According to the ratio in Waryam Singh, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in***

order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".

- (f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.**
- (g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice has been flouted.**
- (h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.**
- (i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in *L. Chandra Kumar v. Union of India* and therefore abridgment by a constitutional amendment is also very doubtful.**
- (j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Courts. Jurisdiction of superintendence under Article 227.**
- (k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.**
- (l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.**
- (m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the**

functioning of the tribunals and courts subordinate to the High Court.

- (n) ***This reserve and exceptional power of judicial intervention is not to be exceeded just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.***
- (o) ***An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality."***

Thus, it is a fit case where this court while exercising the supervisory jurisdiction under Article 227 of the Constitution of India can set aside the order passed by the Principal District Judge, Jammu. The learned Principal District Judge, Jammu, by no stretch of imagination, can sit over an appeal against the order passed by the superior court which has already seized of the matter and issued directions, in compliance whereof the communication dated 24.4.2012 was issued, which was impugned before the learned Principal District Judge, Jammu. The learned Principal District Judge, Jammu could not have exercised the jurisdiction in the instant case where a superior court has already taken cognizance of the matter and has issued directions. The very initiation of proceedings by the learned Principal District Judge, Jammu in the instant case by invoking the powers under Section 12 of the Act of 1988 is nullity in the eyes of law and the order/judgment dated 31.10.2013 passed by the learned Principal District Judge, Jammu whereby the learned

Principal District Judge, Jammu has quashed the communication dated 24.4.2012 cannot sustain the test of law and is liable to be set aside.

The right of the respondent no. 1 to enjoy the Govt. accommodation ceased with his retirement from service and, therefore, he does not possess any right to keep Govt. accommodation with him for all times to come and even after his retirement, when under rules he can retain Govt. accommodation only for a period of one month after his retirement and thereafter, the accommodation is deemed to have been cancelled. Having lost his right to enjoy Govt. accommodation with his retirement from service, the respondent No. 1 cannot question the Deputy Director's communication to deposit the rent which is strictly in conformity with the directions passed by this court in OWP no. 345/2012 and the order passed by the appellate court quashing the same cannot sustain the test of law and is liable to be quashed. The directions passed by the appellate court restraining the petitioners herein from evicting the respondent no. 1 from Govt. accommodation is also in flagrant violation of the Act of 1988 and cannot sustain the test of law and is liable to be set aside.

26. Since the respondent No. 1 has remained in an unauthorized occupation of the premises for more than a decade, he is, therefore, disentitled to perpetuate his illegal occupation of the

Govt. quarter any further on the strength of order passed by appellate authority. The respondent No. 1 does not possess any enforceable right in respect of the quarter nor would it be in the interest of justice to permit the perpetuation of his unauthorized occupation.

CONCLUSION:

27. Thus, in the view of what has been stated above coupled with the settled legal position, the instant writ petition is allowed. The impugned order/judgment dated 31.10.2013 passed by the court of learned Principal District Judge, Jammu in file No. 28/Misc. appeal is quashed/set aside and the respondent no. 1 is directed to vacate the Government Quarter No. 13-F Company Bagh and to pay rent for the premises under his unauthorized occupation w.e.f., 01.04.2011 till the date of vacation of premises @ Rs. 2,500/- per month as per Govt. Order No. 210 EST of 2000 dated 22.08.2000 strictly in conformity with the order passed by this Court in OWP No. 345/2012.
28. Disposed of accordingly.

(Wasim Sadiq Nargal)
Judge

JAMMU
08.11.2023
Naresh, Secy.

Whether the order is speaking: Yes
Whether the order is reportable: Yes