

S. No. 110
Supp. Cause List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH

AT SRINAGAR

OWP No. 651/2018

IA No. 01/2018

CM No. 7192/2019

Reserved on: 10-02-2023

Pronounced on: -03-2023

Zahid Hussain Jan

...Appellant/Petitioner(s)

Through: Mr. Ateeb Kanth, Adv.

Vs.

State of JK and Ors.

...Respondent(s)

Through: Mr. Faheem Shah, GA

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

1. In the instant petition, the petitioner has prayed for the following reliefs;

“That impugned order bearing No. 11/DDD/2018/31-33 dated 11-04-2018 issued by the Deputy Director, Horticulture P&M Delhi, Department of Horticulture, Government of J&K, be quashed by issuance of a writ of certiorari, as same shall be in the interest of justice.

By issuance of a writ of mandamus, the respondents be directed to place the case of the petitioner before the Rent Fixation Committee framed by the Director Horticulture P&M vide order dated 17-03-2017 and be directed to accordingly settle the matter with the petitioner in terms of the decision of the said Committee.

By issuance of a writ of prohibition, the respondents be restrained from taking any adverse decision against the petitioner like eviction, recovery, till the matter is decided by the constituted Committee as same shall be in the interests of justice.”

2. The reliefs aforesaid are being claimed on the premise that the petitioner is a political activist and on account of serious threat to his life had to seek livelihood opportunity outside the valley and

consequently upon applying to the respondents for allotment of a shop in Azadpur Mandi, New Delhi, consequently came to be allotted the same by the respondents in terms of order dated 02-03-2001.

3. It is being further stated that in the vicinity of the shop of the petitioner, some more shops had been allotted to various other persons and firms and that the said allottees/firms have had been paying half of the rent which the petitioner was paying for the rent out premises.
4. It is being stated that the petitioner in this regard submitted representations before the respondents for constitution of Rent Assessment Committee as also for allotment of a basement as well as had been allotted to the other allottees/firms and the said representations are stated to have not been considered by the respondents and instead apprehending forcible eviction from the rented premises at the hands of the respondents, the petitioner filed OWP No. 382/2010 before this Court wherein on 22-04-2010 maintaining of status-quo on spot was ordered by this Court.
5. It is being further stated that on account of passing of aforesaid status-quo order, the petitioner was asked by the respondents to file an application along with the necessary documents for redressal of his grievances which resulted into constitution of a Committee for assessment of rent of the petitioner in terms of order dated 17-03-2017 and that the petitioner was verbally informed to deposit Rs. 1000/- (Rupees one thousand) per month tentatively the rent besides pending water bill which is stated to have been deposited

amounting to Rs. 85,000/- besides an amount of Rs. 50,000/- on account of rentals.

6. It is being next stated that despite having depositing the said amount, the respondents did not settle the grievance of the petitioner and instead issued eviction order dated 11-04-2018 impugned in the instant petition on the premises that the writ petition filed by the petitioner being OWP No. 382/2010 had been dismissed, calling upon the petitioner to liquidate outstanding rentals of Rs. 2, 74, 601/- (Rupees two lacs seventy four thousand six hundred and one) as also to vacate the premises.
7. It is being urged in the petition that there is a statutory and legal relationship of tenancy existing between the petitioner and the respondents and without following the procedure prescribed by law, said tenancy cannot be terminated in terms of the impugned order as the same otherwise also is violative of Article 14 and 21 of the Constitution, besides being breach of Doctrine of Promissory Estoppel as also doctrine of Legitimate Expectations.
8. **Objections** to the petition had been filed by the respondents wherein it is being admitted that the petitioner is in possession of Shop No. 276-D back room with toilet block having been allotted initially to the petitioner for a period of six months. An agreement in this regard is also stated to have been entered into between the petitioner and the respondents providing therein for the payment of monthly rent of Rs. 3,000/- against the said premises and that the petitioner did not pay regular rentals in respect of the premises as per the statement drawn by respondent 4 on 2-5-2018. A Committee of officers is also stated to have been constituted by the

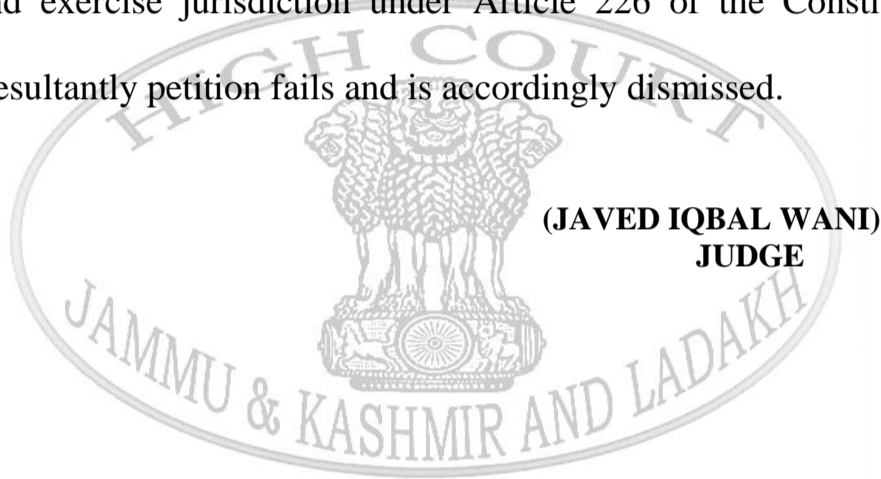
respondents on 9-7-2018 in this regard and according to the report of the said Committee the term of allotment of the petitioner in respect to the premises had not been extended beyond six months and also that the petitioner failed to pay rentals to the respondents and instead chose to file OWP No. 382/2010 before this Court and obtained an order of status-qua therein, on the basis of which the petitioner continued in illegal and unauthorized occupation of the premises for 17 years as against six months allotted period. It is also stated that the premises in question came to be sublet by the petitioner.

Heard learned counsel for the parties and perused the record.

9. Law is no more *res integra* that jurisdiction under Article 226 is discretionary in nature and though no limits can be placed upon that discretion yet it has to be exercised alongwith recognized lines and subject to certain self imposed limitations. One of the such self imposed limitations is when a right claimed by the petitioner would require a detailed examination of evidence and is not capable of being established in proceedings under Article 226 of the Constitution as the object of jurisdiction under Article 226 is the enforcement and not the establishment of right or title. The aforesaid principle has also been extended even to mixed questions of fact and law, thus in general a disputed question of fact is not investigated in a proceeding under Article 226 of the Constitution.
10. Keeping in mind the aforesaid position of law and reverting back to the case in hand, the petitioner indisputably raises complicated and disputed questions of fact in so far as retention of his allotted premises after the expiry of period of six months stipulated in the

order of allotment dated 02-03-2001, the payment/non-payment of rentals of the premises as also the issue of subletting of the premises by the petitioner are concerned. The said disputed question being complicated cannot appropriately be adjudicated upon by this Court in exercise of discretionary jurisdiction under Article 226.

11. This Court in view of above is not inclined to display indulgence and exercise jurisdiction under Article 226 of the Constitution. Resultantly petition fails and is accordingly dismissed.



SRINAGAR
14.03.2023
Sakeena

Whether the order is reportable: Yes/No