

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

Reserved on: 11.10.2024

Pronounced on: 11.11.2024

**LPA No. 8/2024 in
WP(C) No. 3311/2023
CM No. 309/2024**

Sanjeev Gupta, Age 54 years,
S/o Ram Lal Gupta
R/o 49, Purani Mandi, Jammu.

.....Appellant(s)/Petitioner(s)

Through: Mr. Rahul Pant, Sr. Advocate with
Mr. Sachin Gupta, Advocate

Vs

..... Respondent(s)

1. Union Territory of Jammu & Kashmir
Through its Commissioner Secretary,
Housing & Urban Development
Department, Civil Secretariat, Jammu.

2. Building Operating Controlling
Authority, Municipal Area, Jammu,
Through its Chairman.

3. Chief Khalifwarzi Officer, Jammu
Municipal Corporation, Town Hall, Jammu.

4. Joint Commissioner, Jammu Municipal
Corporation, Town Hall, Jammu.

5. Jammu and Kashmir Special Tribunal,
Jammu Through its Registrar.

Through: Mr. S. S. Nanda, Sr. AAG
Mr. Mayank Gupta, Advocate

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

JUDGMENT

PER OSWAL-J

1. This intra-court appeal is directed against the judgment dated 30.12.2023 passed by the learned writ court, whereby the writ petition bearing WP(C) No. 3311/2023, filed by the appellant has been dismissed on the ground

that the appellant has no locus to assail the order of demolition dated 07.01.2011 issued by the respondent No. 2.

2. Mr. Rahul Pant, learned Senior counsel appearing for the appellant has vehemently argued that the appellant is in possession of the property pursuant to the Agreement to Sell as well as the will executed by the original allottee and being the occupier of the building in question, has locus to assail the order dated 07.01.2011 issued by respondent No. 2 under Section 7(3) of J&K Control of Building Operations Act (For short 'the Act'). He has relied upon the judgments of the Hon'ble Supreme Court of India in **"Union of India &Anr. Vs. K.C. Sharma and Company & others"** (2020) 15 SCC 209 and **"Maneklal Mansukhbhai vs. Hormusiji Jamshedji Ginwala"** 1950 SCC 83.
3. Per contra, Mr. S. S. Nanda, learned Senior AAG for the respondent No.1 has argued that the appellant had no locus to file the writ petition against the order of demolition issued by respondent No. 2 against the owner of the property and the Agreement to Sell does not confer any right or title qua the property which is the subject matter of Agreement to Sell and as such, the learned Writ Court has rightly come to the conclusion in respect of lack of locus on the part of the appellant to assail the order dated 07.01.2011 issued by respondent No. 2.
4. Mr. Mayank Gupta, learned counsel for the respondent Nos. 2 to 5 has submitted that the appellant cannot claim any right in the property in question even on the basis of will, as the original allottee was Muslim by religion and under Muslim law, only 1/3rd of the property can be bequeathed by the executant.
5. Heard learned counsels for the parties and perused the record.

FACTS

6. Briefly stated, respondent No. 2 issued an Order No. MJ/CEO/134/3/10 dated 07.01.2011 under Section 7(3) of the Act against one Sh. Majeed Khan S/o Sh. Ahmed Khan R/o Plot No. 197/2 Channi Himmat, Housing Colony, Jammu, thereby directing him to demolish an un-authorized construction raised on plot No. 197/2 Channi Himmat Housing Colony, Jammu. Earlier, a writ petition bearing OWP No. 127/2011 was filed in the name of Abdul Majeed Khan by his attorney, namely, Smt. Prem Lata, who happens to be the mother of the appellant. The said writ petition was dismissed for non-prosecution on 20.04.2022 and thereafter, an application for restoration of the writ petition along with an application seeking condonation of delay was filed by the appellant, claiming himself to be legal representative of the deceased attorney holder i.e. Smt. Prem Lata. After the appellant apprised the learned writ court that original allottee Sh. Abdul Majeed Khan was no longer alive, the applications filed by the appellant were disposed of vide order dated 29.12.2023 as having been rendered infructuous, as the writ petition itself had abated. The appellant, thereafter, through the medium of the writ petition bearing WP(C) No. 3311/2023 assailed the order dated 07.01.2011 issued under Section 7(3) of the Act, which was the subject matter of the earlier writ petition filed by the original allottee through his attorney holder i.e. mother of the appellant. It was pleaded by the appellant that the mother of the appellant had invested her money in the plot measuring 25x50 bearing No. 197, Sector 02, Channi Himmat, Jammu, and being the sole legal heir is an interested person in the property. Besides, it was also pleaded that original allottee- Sh. Abdul Majeed Khan had executed will and other

relevant documents and virtually the appellant is/was the owner in possession of the property. Learned writ court vide its order dated 30.12.2023 dismissed the writ petition with an observation that the petitioner has no locus to question the demolition order dated 07.01.2011.

ANALYSIS

7. The contention raised by the appellant is that he is in lawful occupation of the plot measuring 25x50 bearing No. 197, Sector 02, Channi Himmat, Jammu by virtue of an Agreement to Sell dated 28.02.2004, executed by the original allottee, whereby the original allottee had transferred the lease hold rights in his favour. Besides, he had also executed the will dated 28.02.2004 in favour of appellant with regard to plot mentioned above.
8. Before proceeding further to consider the rival contention of the parties, it would be apt to observe that we are not deciding the issue of ownership of the property and the moot question that has arisen for consideration before this court is as under:

Whether the appellant can claim the status of occupier of the property in question for the purpose of filing a statutory appeal against the order issued under section 7(3) of the Act ?
9. Where any erection or re-erection of building is commenced without permission or in violation of permission issued by the competent authority, then in terms of Section 7(2) of the Act, notice is required to be affixed on the outer door or at some conspicuous part of the building and once the notice is fixed in the manner as mentioned above, it shall be deemed to have been served upon the owner or the occupier of the building. In terms of Section 7(3) of the Act, after a notice is issued in writing and the person to whom notice is given refuses to show cause

within a period specified under sub-section (1) of the Act or if after hearing that person, the Authority is satisfied that the erection or re-erection of the building is in contravention of the provisions of this Section, the Authority shall by order direct the person to demolish, alter or pull down the building or part thereof. Section 13 of the Act provides the remedy of an appeal against the order of an Authority made under Section 5 or Section 7.

10. Regulation 8 of J&K Control of Building Regulations deals with ownership of the land and the same is extracted as under:

8. Ownership of the land. —

(1) No permission shall be granted unless the applicant has provided sufficient proof in support of his ownership of the land.

(2) The following documents shall be taken as sufficient proof of ownership of the land unless this is disputed in a court of law :—

- (i) sale deed/gift deed/lease deed or any other legal mode of transfer executed in the Court of Law ;
- (ii) decree of legal heir passed by the Court of Law;
- (iii) mutation attested by the officials of revenue department.

(3) The permission granted by the Authority shall not by itself confer any right of ownership of the land or the building, as the case may be, upon any person.

11. The expressions ‘occupier’ and ‘owner’ are defined by Section 2(14) and 2(15) of the Act respectively. The expression ‘occupier’ would mean any person who for the time being pays or is liable to pay to the owner the rent or any portion of the rent and includes an owner living in or otherwise using his own land or building and also a rent-free tenant. The expression ‘owner’ used in reference to any land or building, includes the person for the time being receiving the rent of the land or building or of any part of the land or building whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose, or as

receiver who would so receive such rent after the land, building or part thereof, as the case may be, is let to a tenant.

12. The order dated 07.01.2011 impugned by the appellant has been issued for raising construction in violation of the building permission granted in favour of original allottee. For the purpose of obtaining building permission, the applicant must demonstrate his ownership through the medium of sale deed or gift deed or lease deed or any other legal mode of transfer executed in the court of law or the mutation. The agreement to sell is not a recognized mode of transfer of immovable property. If we examine the status of the appellant against expression 'occupier' defined by Section 2(14) of the Act, we find that the appellant does not fall within the definition of the occupier as he is neither a tenant nor owner and also not a rent-free tenant. The appellant claims to have purchased the lease hold rights by virtue of Agreement to Sell. The Agreement to Sell relied upon by the appellant is an unregistered agreement to sell executed without permission of the paramount title holder i.e. J&K Housing Board. The J&K Housing Board is having its own procedure for the purpose of transferring the lease hold rights and the fact remains that the appellant cannot claim any right or title based on Agreement to Sell in respect of lease hold rights of the plot in question. Similarly, the appellant cannot lay any claim over the plot mentioned above on the basis of a Will, unless the plot is transferred in his own name by the J&K Housing Board. Moreso, the appellant is silent as to why he did not get the lease hold rights transferred in his own name when as per his own assertion, he had purchased the lease hold rights vide Agreement to Sell. The appellant

cannot claim to be an ‘occupier’ of the property until or unless the lease hold rights are transferred in his name by the J&K Housing Board.

13. It is pertinent to mention here that in an appeal filed by Abdul Majeed Khan i.e. the original allottee, through his attorney i.e. the mother of appellant herein, before the learned Special Tribunal Jammu, no whisper was made by the appellant therein that the construction was raised by his attorney, where as in the writ petition bearing WP(C) No. 3311/2023 filed by the Appellant, it was pleaded that the appellant as well his mother had raised the construction from their own funds and completed in the year 2008. It would be apt to take note of the fact that initially the writ petition was filed by the original allottee through his attorney holder Prem Lata i.e. mother of the appellant in the year 2011. Had the appellant and his mother raised and completed the construction in the year 2008, it would have been mentioned in the writ petition filed by the original allottee through the mother of the appellant in the year 2011.

Conclusion:

14. The building permission was granted in favour of the original allottee only and once the permission has been granted in favour of the original allottee/owner, any person claiming through the original allottee/owner cannot assail the notice issued under section 7(3) of the Act until or unless there is valid transfer of the property in his own name.
15. In view of the above discussion, we have reached to an inescapable conclusion that the appellant cannot claim the status of occupier of the property in question for the purpose of filing a statutory appeal against the order issued under section 7(3) of the Act. The judgments relied upon by the appellant are not applicable in the present facts and circumstances of

the case, as section 53-A of the Transfer of the Property Act has no application in this case.

16. In fact, we are in perfect agreement with the observations made by the learned writ court that the appellant has crowned himself with multiple status i.e. the purchaser of the lease hold rights and the beneficiary of the Will and had no locus to file the writ petition.
17. Viewed, thus, there is no merit in the appeal and the same is **dismissed**.

(SANJAY DHAR)
JUDGE

(RAJNESH OSWAL)
JUDGE

Jammu
11.11.2024
Neha-II

Whether the order is speaking: Yes

Whether the order is reportable: Yes

