HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA 48/2024
In [OWP 208/2009]

Reserved on: 13.11.2025
Pronounced on: 04.12.2025
Uploaded on: 04.12.2025
Whether the operative part or
full judgment is pronounced: "FULL"

1. **Ishtiaq Ahmad Mir, Aged 60 years**
   S/o Late Haji Muhammad Sidiq
   R/o Baghi Sunder Karan Nagar, Srinagar
2. **Ms. Nuzhat Nawaz, Aged 64 years**
   D/o Late Haji Muhammad Sidiq
   R/o Nigeen Srinagar
3. **Mst. Shafiqa, Aged 70 years**
   Wd/o Late Haji Ghulam Hassan
   R/o Kanihome, Mughal Lane Zakoora, Srinagar
4. **Ishfaq Mir, Aged 49 years**
   S/o Late Haji Ghulam Hassan
   R/o Kanihome, Mughal Lane Zakoora, Srinagar
5. **Shadab Hassan Mir, Aged 44 years**
   S/o Late Haji Ghulam Hassan
   R/o Kanihome, Mughal Lane Zakoora, Srinagar

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

Through: - Mr. Jahangir Iqbal Ganai, Sr. Advocate with
Mr. Suhail Mehraj, Advocate
Mr. Abubakr Pandit, Advocate

v/s

1. **Custodian General,**
   Government of Jammu and Kashmir,
   Srinagar/Jammu
2. **Custodian Evacuee Property Kashmir**
   Custodian Office, Tankipora, Srinagar

...Respondent(s)

Through:- Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Sanjay Parihar-J

1. The appellants are aggrieved of judgment dated 21.10.2023 passed in OWP No. 208/2009 titled ***"Ishtiaq Ahmad Mir and Others v. Custodian General and Another"*** ("the Writ Court"). By the impugned judgment, the writ petition filed by the appellants was dismissed, wherein they had challenged the order dated 08.12.2008 passed by the respondent, Custodian General. Through the said order, the Custodian General had dismissed the appellants' revision petition by holding that no illegality or impropriety existed in the order of the Custodian (Evacuee Property), Kashmir -respondent No. 2 of cancellation of allotment of predecessor- in- interest of the appellants.

2. In the writ petition, the appellants had, inter alia, pleaded that the issue of their being in arrears of rent and having violated Rule 14(3)(xi) was misconceived. It was contended that the Custodian General had ignored the provisions of Rule 14(2), as the appellants had already paid rent to the tune of ₹1.5 lakhs, which exceeded the respondents' claim of ₹1.52 lakhs, rendering the notice regarding arrears of rent clearly erroneous. It was further contended that under Rule 14(2), the Custodian is empowered to evict a person only on grounds that would justify eviction under the law relating to control of rents for the time being in force, meaning that such power is neither arbitrary nor unfettered but must conform to the statutory rent-control framework.

3. The appellants also challenged the finding that the lease property had not been used for a long period, asserting that the successors-in-interest of late Haji Mohammad Jamal, the original lessee, had continuously remained in possession and use of the property. According to them, there was no material before either the Custodian or the Custodian General demonstrating that the property had anyone other than the lawful lessees. With respect to Indo-Kashmir Carpet Factory, it was submitted that it was a business concern of the original lessee, and there was no material to suggest a violation of Section 10(A)(3) or Rule 13-C of the Rules. The appellants argued that the terms and conditions of the lease did not constitute the grant of a fresh lease to them or their predecessor-in-interest, and therefore, the said provisions had no application to their case. Accordingly, by way of the writ petition, they sought a writ of certiorari to quash the Custodian General's order dated 08.12.2008.

4. The writ Court, by the impugned judgment, observed that there was no jurisdictional error on the part of respondent No. 1 in holding that the appellants were in arrears of rent to the extent of ₹1.62 lakhs, and that such a finding did not suffer from perversity. It further held that although the finding regarding non-use of the lease property for many years had indeed been recorded without affording the appellants an opportunity of hearing, there was no necessity to remand the matter, as the Custodian General had already returned a conclusive finding on the issue of unpaid arrears of rent. The writ Court additionally held that if the appellants were genuinely interested in utilising the property for industrial or manufacturing purposes, they ought to have made a proper application for allotment under the Evacuees' Property Act, 2006, and the Rules framed thereunder, and paid the requisite premium under Rule 13-C. The Court noted that despite being earlier called upon to do so, they had not complied. This conclusion, according to the writ Court, flowed from the fact that the original lessee had been in possession of the property for an extended period. Consequently, while disposing of the writ petition, the Court granted the appellants 30 days to approach the respondents with an application for allotment, directing that such an application, if made, shall be considered in accordance with law; failing which, the respondents were permitted to proceed as per law.

5. The judgment of the writ Court is assailed, primarily, on the ground that despite expressly holding that the finding of respondent No. 1 on the alleged disuse of the Evacuee Property had been recorded without granting the appellants an opportunity of hearing, and that such action was beyond jurisdiction, the writ Court nonetheless upheld the impugned order, rendering the judgment perverse. It is contended that the writ Court failed to adjudicate the issues in their correct legal perspective. According to the appellants, the impugned order effectively upholds the cancellation of the lease in violation of the governing terms and conditions between the parties, and therefore cannot sustain judicial scrutiny. It is further urged that the writ Court unjustly rejected the appellants' demonstration that they were not in arrears of rent, thereby rendering its judgment unsustainable.

6. Briefly stated, the dispute concerns land comprising 8 Kanals and 14 Marlas under Khasra No. 27 and 2 Kanals and 18 Marlas under Khasra No. 217, situated at Shah Mohalla, Nawab Bazar, Srinagar, where the business of M/s Indo-Kashmir Carpet was being run by the appellants' predecessor-in-interest, late Haji Mohammad Jamal. The said property had been leased to him by the respondents with effect from 16.01.1952 for industrial purposes. The lease was extended from time to time, and the last extension was granted for a period of 60 years from 01.10.1978, against an annual rent of ₹24,000, payable on or before the 15th of every month, with a stipulation that failure to pay rent within three months would entail liability to pay interest at 7%. During the subsistence of the lease, Haji Mohammad Jamal passed away on 29.01.1990, whereafter the appellants, as his legal heirs, were alleged to have taken over possession without formally applying for transfer of leasehold rights. Respondent No. 2, vide order dated 04.08.2006, directed them to surrender possession under Section 7 of the Jammu and Kashmir Evacuees' (Administration of Property) Act ("the EP Act"). This order was challenged by the appellants before the Custodian General by way of a revision, which was allowed, and the matter was remanded to the Custodian EP vide order dated August 31, 2006, with a direction to conduct de novo proceedings after allowing the appellants to be heard.

7. Pursuant to the remand order dated 31.08.2006, respondent No. 2 adjudicated the matter afresh and returned findings that the appellants had kept arrears unpaid and had put the Evacuee Property to disuse. Accordingly, the lease in respect of the property of late Haji Mohammad Jamal was cancelled vide order dated 28.09.2006, followed by issuance of a notice requiring surrender of possession. This action was then challenged before respondent No. 1 by way of a revision petition. Before the revisional authority, the appellants denied being in arrears at the time of cancellation and asserted that they had fully liquidated the outstanding rent. During the pendency of the said revision, the appellants also filed OWP No. 708/2006 titled ***"Haji Mohammad Sidiq and Another v. State and Others",*** in which the writ Court directed that their possession over the subject property shall not be disturbed pursuant to the order dated 28.09.2006. In view of this intervention, the revision before respondent No. 1 remained pending. Subsequently, vide order dated 07.12.2007, the writ Court clarified that the interim direction of status quo shall not preclude the revisional authority from deciding the revision within a reasonable time, and in any case within two months.

8. Following the direction of the writ Court, the revision petition was taken up for disposal by respondent No. 1, who, upon perusal of the record, observed that the deceased allottee had expired on 29.01.1990. Although the appellants claimed to have informed the department about his demise, they failed to place on record any document establishing their lawful right to succeed the deceased allottee. Respondent No. 1 held that no claim of succession to leasehold rights could be entertained unless supported by proof of succession. With respect to arrears of rent, the appellants relied on a Demand Draft of ₹60,000 covering the months of January, February, and March 2007, alleging that the Custodian had refused to accept and returned the same. However, the appellants did not dispute the rent statement submitted by the Custodian, which reflected that they were liable to pay ₹6.72 lakhs for the period 01.10.1978 to 30.09.2006, against which they had deposited only ₹5.10 lakhs, leaving outstanding arrears of ₹1.58 lakhs. Respondent No. 1 further noted the Custodian's findings that during field inspection, the factory, namely M/s Indo-Kashmir Carpet Factory, was found closed and non-functional, indicating that the property had remained in disuse. It was also observed that persons other than the original allottee were using the property: specifically, that the factory was being run by M/s Indo-Kashmir Carpet Factory, Nawab Bazar, having the status of a partnership concern of one Haji Mohammad Sidiq Mir, who was neither the allottee nor a transferee under any formal order. This, according to the Custodian, demonstrated that the allotted property had been allowed to be occupied by unauthorised persons.

9. Respondent No. 1 further observed, on examining the lease documents, that the lease agreement was for a period of 60 years, which violated Section 10(A) and Rule 13-C. Sub-section (3) of Section 10(A) provides that where structures have been raised on or after 01.01.1948, or are raised in the future, a premium shall be payable at the prescribed rate. The lease agreement dated 10.10.1978 pertained to two sheds with carpet looms, a weighing shed platform, a single-storey building, a godown, a store-room, and the attached land, thus attracting a mandatory premium as a condition precedent for the grant of lease. Furthermore, Rule 13-C restricts the initial period of lease to 40 years, whereas the agreement in question was for 60 years, rendering it contrary to law and not accompanied by the premium that was required to be paid. Respondent No. 1, therefore, upheld the order of the Custodian dated 28.09.2006, cancelling the lease. While disposing of the revision, respondent No. 1 recorded the following observations:

> *"It is proper to mention here that the Evacuee Property has not been properly managed after the death of the original allottee, Haji Mohammad Jamal, and the Custodian has also failed to discharge his duties in administering, preserving, and managing this Evacuee Property. If the lessees/allottees were obliged to pay rent on time, the Custodian was also duty-bound to recover the rent. Both have failed and, in the process, the interests of the Evacuee have suffered. It is keeping in view this aspect of the case that during the proceedings, I suggested to the petitioners that, if they are really interested in using or utilising the property for industrial/manufacturing purposes, they should come forward with a proper application for allotment under the provisions of the J&K Evacuees' (Administration of Property) Act, Svt. 2006 and the Rules made thereunder, and pay a premium for the said property as is envisaged under Rule 13-C. The learned counsel sought time to consult his client, but never responded to the offer. This order shall be subject to the outcome of OWP No. 708/2006 and OWP No. 851/2006 pending before the Hon'ble High Court at Srinagar*."

10. Ld. Counsel for the appellants argued that the findings returned by respondent No. 1 were wholly perverse and that the writ Court failed to appreciate clause 4 of the lease agreement, from which the true intention of the parties had to be gathered. Clause 4, it was submitted, mandated that recourse to clause 18 could be taken only after a proper demand had been raised and only upon refusal of the appellants to comply with such demand. Since no demand of interest had ever been issued by the respondents, the order cancelling the lease, as well as the writ Court's approval of such cancellation, was contrary to the express terms governing the parties. It was further urged that the appellants had clearly demonstrated before the writ Court that they were not in arrears of rent, yet the perverse findings of the authorities had been mechanically upheld. Once the writ Court itself had concluded that the finding of alleged non-use of the property for several years was recorded in violation of the principles of natural justice, the writ Court ought to have set aside the impugned orders. Instead, the Court proceeded to uphold orders which were illegal and passed in excess of jurisdiction. According to the appellants, when an authority exceeds its jurisdiction, the resultant cancellation of the lease is void and unsustainable in law, and the writ Court failed to notice this fundamental error. The impugned judgment, therefore, suffers from patent illegality, warranting correction in the exercise of Letters Patent jurisdiction.

11. Per contra, learned counsel for the respondents supported the conclusion of the evacuee-authorities, submitting that concurrent findings of fact recorded by the Custodian and upheld by the Custodian General had been rightly approved by the writ Court. It was argued that the appellants' reliance on clauses 4 and 18 of the lease agreement was an afterthought, as no such plea had been raised before the authorities under the Act. Once it stood conclusively established on appreciation of the record that the appellants were in arrears of rent, and had failed to comply with clause 18, the Custodian General was justified in cancelling the lease, particularly in view of the demise of the original allottee and the absence of any subsisting lawful transfer of leasehold rights. The respondents further contended that the appellants could not seek protection under rent-control legislation, which, under Section 3(2), expressly does not apply to allotments or leases under the EP Act. Payment of rent after initiation of eviction proceedings, it was argued, cannot alter the position that existed at the time of cancellation. The cancellation and subsequent steps were therefore in strict accordance with the provisions of the EP Act. The writ Court, it was submitted, correctly appreciated the factual and legal matrix, and rightly concluded that there was neither any jurisdictional error nor violation of natural justice, and that the findings recorded by the authorities were not perverse nor tainted by any error of law.

12. We have considered the rival submissions, examined the pleadings, and perused the record annexed thereto. Before addressing the core issues raised by the parties, it is necessary to delineate the relevant provisions of the Jammu &Kashmir Evacuees (Administration of Property) Act of 2006 (Svt.) Section 2(a) of the Act defines "allotment" as the grant by the Government, the Custodian, or any person duly authorised by the Custodian, of a temporary right of use and occupation of any immovable evacuee property to any person, otherwise than by way of lease. In ***Gian Kaur v. Provincial Rehabilitation Officer, AIR 1956 J&K 33(FB),*** it was held that an allotment under the Act confers merely a temporary right of use and occupation and constitutes only a licence, not a lease. Since the allotment is expressly stated to be "otherwise than by way of lease," it does not amount to a transfer of interest in the property but only creates a permissive right, which can be revoked at any time. It was further observed that, unlike a lessee under Sections 105 and 108(j) of the Transfer of Property Act, who acquires a transferable and sometimes heritable interest, an allottee is only a licensee whose occupation can be revoked at any time. The Court further held that the interest of an allottee does not bear the insignia of proprietary rights and therefore does not constitute "property" within the meaning of Article 19(1)(f) of the Constitution.

Similarly, ***Tej Ram v. Custodian General, 2017 (2) JKLRJ 122*** reaffirmed that an allottee is entitled to retain possession only so long as the allotment is not cancelled in accordance with the Act. Section 3 gives the provisions of the EP Act an overriding effect, and sub-section (2) further clarifies that no other law relating to rent control or eviction shall apply or ever be deemed to have applied to evacuee property. The Custodian, under the Act of 2006, is not the owner of evacuee property but merely an administrator and protector thereof.

13. With respect to the nature of an allottee's interest, ***Shamsher Singh v. Deputy Custodian General, AIR 1973 J&K 89***, held that the interest of an allottee under the Act is not property and therefore cannot devolve upon heirs by succession nor be disposed of through any mode of transfer. An adopted son claiming rights over an allotted property under succession law was thus held to have no such entitlement because the Act of 2006 has overriding statutory effect.

14. On the interpretation of Section 3(2) of the EP Act, **"*Tilak Raj v. Custodian Jammu", AIR 1979 JKLR 179***, upheld the constitutional validity of the provision, holding that it does not violate Article 14 of the Constitution. The Court further held that the Rent Control Act does not apply to evacuee property for two main reasons: first, it predates the EP Act (Svt. 2002) and therefore is not a subsequent overriding legislation; and second, its applicability was limited only to certain specified areas, unlike the EP Act, which extends to the entire State. Section 10 of the Act, empowering the Custodian to vary or cancel allotments and leases, has been interpreted in **"*Bhupinder Singh v. Custodian", AIR 1978 J&K 6***, to mandate that before terminating a lease or allotment, the Custodian must issue a show-cause notice and afford a reasonable opportunity of hearing. The principle applies uniformly to both allotments and leases. This requirement of notice and hearing has been consistently reiterated, including in 1993 JKLR 258, emphasising that a reasonable opportunity must precede any action under Section 10.

15. Rule 14 of the EP Rules (2008 Svt. /1951 AD) further regulates allotments and leases. Rule 14(1) states that terms and conditions may not be varied unless the Custodian is satisfied that the allottee or lessee has acted or omitted to act in a manner rendering him liable to eviction under law. Rule 14(3) provides that upon restoration of property to the evacuee or their heir, the Custodian stands absolved of responsibility; however, such restoration does not prejudice existing enforceable rights of others. It also mandates that no restoration order shall issue unless arrangements for recovery of dues owed to the Custodian are made, and every lease granted by the Custodian shall continue to bind the person to whom the property is restored until it terminates by lapse of time or operation of law.

16. A plain reading of Rule 14(3) indicates that an allotment may be cancelled if arrears of rent for three months remain unpaid, except where the allottee or a person residing with him has constructed a residential house on the property. The second proviso to Rule 14(3) bars eviction from residential accommodation without serving the allottee with a notice of at least six months. Thus, the six-month protective notice applies only to the cancellation of allotments relating to residential accommodation under clause 4 of sub-rule (3). In all other cases, only reasonable notice is required, as reiterated in *Tilak Raj* (supra). Furthermore, in JKLR 1978, it was held that if it is established that the house was constructed by the allottee, lessee, or any person ordinarily residing with or dependent on them, the protection under Rule 14(3)(v) is attracted.

17. In the present case, based on the factual position admitted and explained by the parties, it stands established that the property in question was originally allotted to late Haji Mohammad Jamal on 16.01.1952, as proprietor of M/s Indo-Kashmir Carpet Factory, for industrial purposes. The property itself was an evacuee property comprising two sheds with complete carpet looms, one single-shed (platform), a single-storey building, a godown, a store-room with movables as per inventory, along with attached land. With effect from 01.10.1978, the allotment was renewed for a period of 60 years on the condition that the allottee would pay rent at the rate of Rs. 24,000/- per annum to the lessor on or before the 15th day of every month, failing which he would be liable to pay interest at 7% per annum on rent outstanding beyond three months. Having regard to the law governing such allotments, the allotment merely conferred a temporary right of use and occupation and constituted only a licence, not a lease, notwithstanding that the allotment was followed by an instrument between the parties described as a lease deed. Once the allotment is categorised in law as a licence, the mere nomenclature of the subsequent document cannot clothe the allottee with the status of a lessee. Consequently, the allotment, being like a licence, remains terminable and can be cancelled in terms of Rule 14 of the Evacuee Property Rules.

18. The plea raised by the appellants, that upon issuance of a notice of demand for rent, the relationship between the parties must thereafter be governed by the

Rent Control laws, lacks any legal or factual foundation. As the allottee, being a licensee, holds only a right of use and occupation subject to the stipulated conditions, the provisions of Section 3(2) of the Evacuee Property Act expressly exclude the applicability of any other law controlling rents or eviction. The learned Single Judge has rightly relied upon the legal position laid down by this Court in *Tilak Raj* (supra), wherein it was categorically held that the Rent Control Act does not apply to evacuee property, since the former, being a subsequent and area-specific legislation, cannot override the Evacuee Property Act, which extends to the entire erstwhile State of Jammu and Kashmir. In this background, the appellants' plea seeking protection under the Rent Control Act is wholly misconceived.

19. Under Rule 14(2) of the Rules of 2008, respondent No. 2 is vested with the authority to cancel an allotment and evict the allottee if satisfied that the allottee has kept rent arrears unpaid for any three months. In the present case, there is a concurrent finding of fact by both authorities, affirmed by the writ Court that the allottee had violated Rule 14(2) by remaining in arrears of rent to the extent of Rs. 1.62 lakhs up to 30.09.2006. Thus, the condition for cancellation stood fulfilled. Clause 4 of the lease deed explicitly obligated the allottee to pay rent on or before the 15th day of every month, and failure to do so for three consecutive months rendered the allotment liable to cancellation. While Clause 4 deals with the timely payment of rent and the consequence of default, the provision for charging 7% interest is a distinct and independent consequence which the respondents may or may not choose to enforce. Clause 18, on the other hand, speaks of the general conditions under which eviction may be ordered, and derives its statutory source from Rule 14 of the Evacuee Property Rules. Both authorities below, as well as the writ Court, have correctly appreciated the import and scope of Clause 4, and no further elaboration is necessary.

20. The appellants' contention that the power of eviction under Rule 14 is not absolute and must conform to the law relating to rent control is again untenable in view of Section 3(2) of the Act. It is also not the appellants’ case that the order of cancellation was passed behind their back; on the contrary, the record demonstrates that they were duly afforded an opportunity of being heard, and the initial notice under Rule 7 had been issued on 28.09.2006. Clause 15 of the agreement unequivocally provides that in the event of any failure or default on the part of the lessee in complying with the terms and conditions or in paying rent in accordance with the agreement, the lessor is competent to terminate the lease after 30 days' notice. Clause 17(4) further stipulates that the lessor may terminate the lease and evict the lessee if the latter has kept rent unpaid for any three months. These contractual stipulations, when read in conjunction with the statutory mandate of Rule 14, fully justify the order of cancellation impugned in the present proceedings.

21. Both the writ Court as well as respondent No. 1 have taken the view that, should the appellants desire to retain possession of the demised property, they may apply for fresh allotment or seek regularisation of possession in accordance with the rules governing such allotments. However, in terms of Rule 10-A, since the demised property is of a commercial nature, any such allotment is coupled with the requirement of payment of a premium, a condition the appellants are unwilling to fulfil. Consequently, despite the concurrent findings recorded against them, the appellants have continued to agitate issues that stand settled in law, leaving no scope for us to call for any kind of interference.

22. Appellants had also taken the plea that the possession of legal heirs of the deceased allottee cannot be regarded as unauthorized and the plea taken by the respondents that the demise property post death of the allottee had remained not in use, and finding returned thereto had been determined at the back of the appellants. Therefore, the respondents were under corresponding obligation to have regularized the possession of legal representatives in accordance with the provisions of the Act and the insistence on the part of respondents that they are required to pay premium in terms of Rule 13-C was not applicable to the case of the appellants. This argument is of no help for the appellants because if it take the argument of the appellants that post demise of the allottee, the possession need to be regularized in favour of the appellants on same terms and conditions as was applicable at the time of granting of original allotment that cannot be made at the whims and caprices of the appellants because Rule 13-C had come into operation post 2002 whereas the allottee had expired in the year 1990, and though at the time of allotment there was no condition for payment of premium but with the rule possession existing at the time of regularization, not only the Evacuee Property is to be put to auction so as to determine and take care of the interest of the Evacuee because Rule 10-A specifically envisages that in case it is necessary to revise the rates of rent of Evacuee Property so as to make the rent reasonable, the authorities under the Act are empowered to go for revision of rent, once Section 10(A) when read with Rule 13-C makes the position clear that the authorities under the Act are acting for the betterment of due administration of the Evacuee property and respondents being required to administer the property in a way to advance the interest of Evacuee or empowered to fix appropriate rent and payment of premium in accordance with the rules, and as discussed above, not only the authorities under the Act but even the writ Court had taken into consideration that the legal representatives of the deceased allottee were stated to be occupying the demise property, and in case they desired, could have applied for regularization of possession in accordance with the provisions of the Act.

23. For the aforesaid reasons, we do not find any perversity in the order impugned nor the order of the writ Court suffers from any legal or factual lacunas. Resultantly, we see no merits in the Letters Patent Appeal and the same is dismissed, with the direction to the respondents to proceed ahead in accordance with law, and we also reiterate what the writ Court had asked the appellants to apply for regularization of possession as per the applicable rules in case they wish to do so.

24. ***Disposed of*** as such.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR
04.12.2025
Akhil Dev

Whether the order is speaking? : Yes

Whether the order is reportable? : Yes