

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

**Reserved on: 07.03.2025
Pronounced on: 17.03.2025**

OWP No. 259/2015

Sahib Saran Khajuria, age 64 years
S/O Late Sh. S.N. Khajuria,
R/O 8, Municipal Flats,
Sabzi Mandi, Jammu

.....Petitioner(s)

Through: Mr. L.K. Sharma, Sr. Advocate with
Mr. Deepak Khajuria, Advocate

Vs

1. Jammu Municipal Corporation
Through its Executive Officer,
Town Hall, Jammu

2. Assistant Commissioner (Rev.)
Municipal Corporation,
Town Hall, Jammu

..... Respondent(s)

Through: Mr. S.S. Nanda, Sr. AAG

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

01. Petitioner, through the medium of this petition, filed under Section 103 of the Constitution of J&K read with Article 226 of the Constitution of India, seeks directions from this Court for issuance of writ of Certiorari to quash the Notice No. JMC/RB/9216 dated 03.03.2015, Notice No. JMC/RB/4072 dated 08.01.2015 and Order No. JMC/RB/241-44 dated 01.06.2012 so far it pertains

increasing the rent of the flat under the tenancy of the petitioner by 20% or Rs. 1000/- whichever is higher.

02. It has been further pleaded by the petitioner that he was allotted flat No. 8 of Municipal Flats at Sabzi Mandi, Jammu by the then Municipal Committee Jammu, in the year 1974 at a monthly rent of Rs. 60/-, which was increased from time to time i.e., Rs. 100/- in 1992; Rs. 130 in 1994; Rs. 169/- in March, 1999; Rs. 500/- in 2009 and Rs. 600/- in the year 2012; that there was a dispute with regard to increase of rent for the year 2004-05 between the parties with the result the petitioner and other tenants of the respondents filed a writ petition in this Court challenging the unilateral increase of the rent by the respondents; that in the year 2009 with the consent of the parties the rent was, however, fixed @ of Rs. 500/- per month, which the petitioner continued to pay and again in the year 2012 the rent was increased by 20% of the existing rent at that time and thereby fixing the rent at Rs. 600/- per month and rent stood paid by the petitioner at this rate upto ending March 2015 which was received by the respondents without any objection and that had the rent been increased in the year 2012, as now claimed by the respondents, the respondents would not have not accepted rent @ Rs. 600/- per month upto ending March 2015.

03. It has been alleged by the petitioner that the respondent No. 2 issued the impugned Notice No. JMC/RB/4072 dated

08.01.2015 intimating the petitioner that the rate of the rent in respect of Municipal Flats has been increased by 20% or Rs. 1000/-, whichever is higher and asked the petitioner to clear his outstanding on account of balance rent of flat w.e.f 01.04.2012 to which the petitioner sent a detailed reply. However, without consideration of the reply, the respondents issued another Notice No. JMC/RB/9216 dated 03.03.2015 calling upon the petitioner to pay Rs. 14,400/- as outstanding arrears within seven days, failing which, the sealing of the premises/flat was threatened; that the impugned notice was based on an order dated 01.06.2012, which was never intimated to the petitioner nor any opportunity of being heard was given to the petitioner, to increase the rent unilaterally more than 100% from Rs. 500/- to Rs. 1000/- as against the earlier information that the rent @ 20% was increased from Rs. 500/- to Rs. 600/- per month which the respondents continued to receive from the petitioner and stood paid by him up to ending March 2015.

- 04.** It has been further asserted that the respondents had agreed in earlier litigation that the respondents will afford an opportunity of being heard to the petitioner, in case, they intend to increase the rent in future as was also ordered by this Court in OWP No. 19/2005 titled "*Madan Baru V/S Jammu Municipal Corporation & Anr.*" as such, the impugned notices are violative of the principles of natural justice as well as the provisions of the municipal

laws which have not been strictly followed by the respondents while demanding the enhancement retrospectively w.e.f 2012.

- 05.** Pursuant to notice, the respondents filed objections asserting therein that since the petitioner had failed to deposit the requisite arrears despite the lapse of 45 days by virtue of earlier notice dated 08.01.2015, the respondents issued a notice dated 03.03.2015 to the petitioner for depositing his outstanding arrears within seven days; that the respondents increased the rent of municipal flat No. 8, allotted to the petitioner from Rs. 600/- to Rs. 1000/- which is not exorbitant and the same has been increased by the respondents from time to time as has been admitted by the petitioner himself; that the monthly rent was increased from Rs. 600/- to Rs. 1000/- which is a nominal increase as compared to the existing market rates in the same locality where the flat is situated, in view of the fact that the existing market rent for the same space is more than Rs. 10,000/- per month in the local area; that the respondents issued Notice dated 08.01.2015 to the petitioner by virtue of which he was informed that the rate of rent of Municipal flats was increased by 20% or Rs. 1000/- whichever is higher by virtue of Endorsement No. JMC/RB/241-44 dated 01.06.2012, but the petitioner failed to pay the increased amount. Since the petitioner did not liquidate the outstanding arrears, another Notice dated 03.03.2015 was served upon him, requesting him to clear

the outstanding arrears, failing which, his premises may be sealed and therefore, the plea of the petitioner that the action of the respondents is violative of principles of natural justice does not hold true, as such, the present petition deserves dismissal.

06. It has been further averred that the Jammu Municipality has now upgraded to Jammu Municipal Corporation and to provide civic facilities to the people of Jammu, the expenditure has been increased to manifolds and therefore, it has become very difficult for Jammu Municipal Corporation to meet its expenditure with meager resources and that the respondent-Jammu Municipal Corporation constituted a committee to work out the measures to accelerate/mobilize the municipal resources and the said committee recommended to enhance the rent/fee of municipal assets and based on those recommendations of the committee, the municipal rent was enhanced from time to time and it was prayed to reject the petition.

07. Mr. L.K. Sharma, learned senior counsel appearing for the petitioner argued that respondents had no power to increase the contractual rent of the allotted flat to the petitioner unilaterally that too retrospectively at the back of the petitioner in violation of principles of natural justice; that the enhanced rent which has been claimed is in violation of the undertaking given by the respondents before this Court that whenever they intend to increase the

rent, an opportunity of being heard will be given to the tenants. He has further argued that with the increase of rent from Rs. 500/- to Rs. 600/- in the year 2012 and making payment by the petitioner and received by the respondents upto March 2015, the rent could not have been increased manifold rather by 100% increase from Rs. 500/- to Rs. 1000/- in view of the impugned notices and it was prayed that the impugned notices being not sustainable in the eyes of law, be quashed.

- 08.** Mr. S.S. Nanda, learned Sr. AAG appearing for the Respondent-Corporation, argued that the flat had been allotted to the petitioner initially @ Rs. 60/- per month and has since been increased from time to time to Rs. 600/- till the year 2012; that the respondents increased the monthly rent from Rs. 600/- to Rs. 1000/- which is a nominal increase as compared to the existing market rent of more than Rs. 10,000/- for such a premises in the same locality where the flat in question is situated and therefore, the respondents have acted well within their power to increase the same from Rs. 600/- to a mere Rs. 1000/- per month. It was further argued that in the year 2012 the increase of rent from Rs. 600/- to Rs. 1000/- cannot be stated to be exorbitant given to the location of the property and, as such, the petition filed by the petitioner is misconceived and prayed that it be rejected.

- 09. Heard learned counsel for the parties, perused the record produced by the learned counsel for the Respondent-Corporation and considered.**
- 10.** The Flat No. 8 of Municipal Flats at Sabzi Mandi, Jammu of the Respondent-Corporation was allotted to the petitioner in the year 1974 at a monthly rent of Rs. 60/- which was increased from time to time in the years 1992, 1994, 1999, 2009 and 2012 and till then there was no dispute between the parties with regard to fixation and payment of the rent.
- 11.** The petitioner raised the dispute with regard to a Notice issued to him on 08.01.2015 by the respondents that in view of the some decision taken on 01.06.2012, the rate of his flat had been increased by 20% or Rs. 1000/- whichever was higher on the plea that the rent had been increased from Rs. 500 to Rs. 600/- in the year 2012 only and that he had paid the rent upto ending March 2015 @ Rs. 600/- which had been received by the Respondent-Corporation without raising any objections and that the Respondent-Corporation in the year 2015 could not unilaterally and retrospectively enhance the rent again from the year 2012 as now claimed by them in the impugned notices. The respondents have not placed on record the copy of the order whereby a decision has been taken to enhance the rent of the flats from April 2012 to Rs. 1000/- or an increase by 20% as against the earlier decision of enhancing the rent of petitioner's flat from Rs. 500/- to Rs. 600/- in the year

2012 itself. Such a recourse to revise the rent twice in the same year is not permissible and, as such, the notices requiring the petitioner to deposit the enhanced rent is not in accordance with law and the principles of natural justice.

- 12.** The flat in question had been rented out on 08.04.1974 for a term of 11 months @ Rs. 60/- per month, as rent payable monthly on or before the 07th of each calendar month with one of the stipulations that it shall be lawful for either of the parties to determine the tenancy created on giving up to the other of them one month's previous notice in writing, however, the parties have not been able to place on record as to how the revision of rent is to be maintained. The rent seems to have been revised @ 20% after every three years as per the submissions made by learned counsel for the parties upto the year 2012.

- 13.** Learned counsel for the petitioner submits that since the petitioner had liquidated the rent @ 600/- per month from the years 2012 to March, 2015, however, he shall not have any objections in further revision of the rent as per the policy of the Corporation after the petitioner being heard on the issue.

- 14.** Viewed thus, the unilateral and retrospective enhancement of the rent of the petitioner's flat vide impugned notices, being unjust, cannot be permitted in accordance with law. The petition is, thus, allowed and the impugned order and notices i.e., **Order No. JMC/RB/241-44 dated**

01.06.2012, Notice No. JMC/RB/4072 dated 08.01.2015 and Notice No. JMC/RB/9216 dated 03.03.2015, are ordered to be **quashed**. The respondents however, shall be at liberty to enhance the rent as per its policy after affording an opportunity of being heard to the petitioner from April, 2015 and adjust the rent, if any, paid after April, 2015 by the petitioner, towards the arrears.

15. Petition is, accordingly, **disposed of**, along with the connected application(s). There is no order as to costs.
16. Record received (two files) from the respondents is ordered to be returned through learned Sr. AAG.

JAMMU
17.03.2025
SUNIL



(M A CHOWDHARY)
JUDGE

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