

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 2581/2021 c/w
WP(C) 202/2021

Reserved on: 01.12.2025
Pronounced on: 15.12.2025
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Whether the operative part or
full judgment is pronounced: **Full**

...Petitioner(s)

WP(C) 2581/2021

1. RADHA KRISHEN KOUL, AGED 85
YEARS
S/O TARA CHAND KOUL,
2. MOHAN LAL KOUL, AGED 76 YEARS
S/O SH. LAMBU DHAR KAUL
RESIDENTS OF SAFAKADAL, SRINAGAR
AT PRESENT H.NO. 39, EXCHANGE
ROAD, SUMMANDER BAGH, SRINAGAR

Through: Mr. Aijaz Ahmad Chisti, Advocate

Vs.

...Respondent(s)

1. UNION TERRITORY OF JAMMU AND
KASHMIR,
THROUGH COMMISSIONER CUM
SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE, CIVIL
SECRETARIAT JAMMU/SRINAGAR
2. FINANCIAL COMMISSIONER,
REVENUE, J&K GOVERNMENT,
SRINAGAR
3. DIVISIONAL COMMISSIONER,
KASHMIR SRINAGAR
4. DEPUTY COMMISSIONER, SRINAGAR
5. ASSISTANT COMMISSIONER, NAZOOOL,
DEPARTMENT OF REVENUE,
SRINAGAR

Through: Mr. Ilyas Nazir Laway, GA

WP(C) 202/2021

1. RADHA KRISHEN KOUL, AGED 85
YEARS
S/O TARA CHAND KOUL,

2. MOHAN LAL KOUL, AGED 76 YEARS
3. HIRA LAL KOUL, AGED 74 YEARS
4. KRISHAN NARAYAN KAUL, AGED 61 YEARS
SONS OF SH. LAMBU DHAR KAUL
RESIDENTS OF SAFAKADAL, SRINAGAR,
AT PRESENT H.NO. 39, EXCHANGE ROAD,
SUMMANDER BAGH, SRINAGA

Through: Mr. Aijaz Ahmad Chisti, Advocate

1. UNION TERRITORY OF JAMMU AND KASHMIR,
THROUGH COMMISSIONER CUM SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE, CIVIL SECRETARIAT JAMMU/SRINAGAR
2. FINANCIAL COMMISSIONER,
REVENUE, J&K GOVERNMENT,
SRINAGAR
3. DIVISIONAL COMMISSIONER,
KASHMIR SRINAGAR
4. DEPUTY COMMISSIONER, SRINAGAR
5. ASSISTANT COMMISSIONER, NAZOO, DEPARTMENT OF REVENUE,
SRINAGAR

Through: Mr. Ilyas Nazir Laway, GA

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

I. INTRODUCTION

- 1) In view of the identical issues involved in these writ petitions, both were heard together and are being disposed of by this common judgment.

II. BRIEF FACTS OF WP(C) No. 202/2021

2) The petitioners have filed the instant petition under Article 226 of the Constitution of India, seeking the following reliefs which are reproduced as under:

(i) A writ of certiorari for quashing order No. Rev/NDK/81/69-II dated 19.09.2005 to the extent it accords proprietorship only over 3 marlas and 269 sq. ft. of land on payment of Rs. 80.00 lakhs per kanal;

(ii) A writ of mandamus directing the respondents to accord similar treatment as given to other leaseholders under Government Order No. Rev/NDK/248 of 1981 dated 17.08.1981; and

(iii) A direction to produce records regarding grant of proprietary rights to similarly situated persons in the same shopping line.

3) Brief facts of the petition are that the leased property measuring 5 marlas along with a structure at Sheikh Bagh, Srinagar, originally belonged to Pandit Haldar Joo and Pandit Tarachand and stood transferred to the petitioners vide Government Order No. D.K. 68 of 1957 dated 06.09.1957. The lease expired in 1974, whereafter the petitioners applied for its renewal and also sought conferment of proprietary rights. The lease was renewed from 01.04.1974 by Government Order No. Rev/NDK/43 of 1982 dated 15.02.1982. Meanwhile, Government Order No. Rev/NDK/248 of 1981 (for short “**the Government of Order of 1981**”) had been issued pursuant to Cabinet Decisions No. 280 dated 22.06.1981 and No. 356 dated 17.08.1981 for conferment of proprietary rights. The petitioners obtained the requisite NOC on 13.08.1981.

4) The grievance of the petitioners is that despite repeated recommendations by the Assistant Commissioner Nazool and the

Divisional Commissioner, no action was taken to regularize their land under the **Government Order of 1981**. Ultimately, in 2005, only 3 marlas and 269 sq. ft. were regularized, that too under the J&K State Lands (Vesting of Ownership Rights) Act, 2001 (Roshni Act) upon payment of Rs. 80 lakhs per kanal. The petitioners therefore allege discrimination as other similarly situated leaseholders were charged only Rs. 3.80 lakhs per kanal under the **Government Order of 1981**.

5) It is pleaded by the petitioners that despite having the NOC and recommendation from the concerned authorities and having raised their concerns with competent authorities to regularize their land pursuant to government order No. Rev/NDK/248 of 1981 dated 17/8/1981, they are being denied the same treatment when the similarly situated persons having leasehold properties in the same vicinity stands regularized, by conferment of proprietary rights upon them, which according to petitioners violates Article 14 of the Constitution of India.

6) While the representation was pending for consideration before the government for implementation of the Government order of 1981, a writ petition WP (C) No. 202/2021 was preferred by the petitioner before the High Court for the implementation of the Government order of 1981, wherein the Court directed the maintenance of status quo subject to objections and till next date of hearing. However, Respondent No.5 issued Notice No. ACN/R/L/85 dated 27/10/2021, authorized by Section 4(1) of the J&K Public Premises (Eviction of

Unauthorized Occupants) Act, 1988, calling upon the petitioners to show cause by 08/11/2021 as to why an eviction order should not be issued. The petitioners challenged the said notice by filing the instant petition seeking quashing of order No. ACN/R/L/85 dated 27/10/2021.

III. BRIEF FACTS OF WP(C) 2581/2021

- 7) Through the medium of this petition, the petitioners seek a writ of certiorari for quashing of Order No. ACN/R/L/85 dated 27.10.2021 issued by respondent No. 5 i.e Assistant Commissioner Nazool/Estate Officer.
- 8) By virtue of the said order, the respondent-Assistant Commissioner Nazool/Estate Officer, in exercise of powers conferred under Section 4(1) of the Jammu and Kashmir Public Premises (Eviction of Unauthorized Occupants) Act, 1988, called upon the petitioners to show cause on or before 08.11.2021 as to why an order of eviction should not be passed against them.
- 9) The petitioners contended that that the said order is illegal and has been passed without any authority or power. It is pleaded that the respondents turned a blind eye to the objections/reply submitted by the petitioners to the impugned order passed by respondent no. 5, wherein the petitioners have in clear and categorical terms demonstrated that the notice is illegal, unauthorized and without jurisdiction.

- 10) The petitioners, apart from seeking a writ of certiorari for quashing of Order No. ACN/R/L/85 dated 27.10.2021 issued by respondent No.5, further seek a writ of mandamus commanding the respondents not to interfere or cause any kind of interference *vis-à-vis* the subject matter forming the basis of the impugned notice.

IV. REPLY/OBJECTIONS TO WP(C) No. 202/2021

- 11) The respondents have raised preliminary objections that the petitioners have concealed material facts. They contended that the petitioners had earlier filed OWP No. 2336/2018 and OWP No. 383/2019 and withdrew them, when replies were filed by respondents, and the same was deliberately concealed by petitioners, thereby abusing the process of law.

- 12) It is contended that the petitioners applied under the Roshni Act, 2001, which has been declared void ab initio by the Hon'ble Division Bench in PIL No. 19/2011 titled Prof. S.K. Bhalla v. State of J&K and others on 09.10.2020. It is further stated that only 3 marlas and 259 sq. ft. were transferred under the Roshni Act in 2005, and for the remaining land the petitioners stopped paying ground rent from 2005.

- 13) It is pleaded that the lease expired on 01.04.2014 and the petitioners did not apply for renewal, making them unauthorized occupants. That as per the new Rules issued by the Government vide S.O. 668 dated 09.12.2022 read with Rule 11 of the Land Grants Rules, 2022, outgoing lessees of commercial leases must hand over possession and are liable to eviction under the Jammu and Kashmir

Public Premises (Eviction of Unauthorized Occupants) Act, 1988. For the facility of reference relevant extract of Rule 11 is extracted as under:

“Provided further that with the notification of these rules all the outgoing lessees (except in the case of subsisting/expired Leases for Residential purposes) shall immediately handover the possession of the land taken on lease to the Government, failing which the outgoing lessee shall be evicted as per the provisions of Public Premises (Eviction of Un-authorized Occupant) Act, 1988. The outgoing lessees shall, however, be paid for any improvement carried out or structure constructed thereon at the value assessed as provided under Sub Rule (xi) of Rule 13 provided that the lessee has not violated any of the conditions of the lease.

Provided further that the outgoing lessees for the leases granted under these rules shall not be entitled to or paid for any improvement on the land including structure, and after expiry of the lease period the land along with structure will vest in the government free from all encumbrances.

Explanation: It will be inferred that the outgoing lessee was fully aware and had recovered the cost spent on land improvement Including structures during currency of the lease period.”

- 14) It is further pleaded that the assertion of the petitioners to consider the case vide cabinet decision No: 280, dated 22-06-1981, cabinet decision 356 dated 17-08-1981 which culminated into Issuance of Government order No: Rev/NDK/248 of 1981, dated: 17-08-1981 is completely absurd as the petitioners have applied for the conferment of ownership rights under the unconstitutional Roshni Act. It is further pleaded that the petitioners were not the lessees of the property on date, thereby, making them ineligible of falling within the ambit of Government order of 1981.

V. REPLY/OBJECTIONS TO WP(C) No. 2581/2021

15) The respondents contend that they have not infringed or violated any constitutional, fundamental, or legal right of the petitioners in any manner whatsoever. Consequently, the writ petition is not maintainable and liable to be dismissed.

16) It is further pleaded that the petitioners have not approached this Court with clean hands and have misrepresented and concealed material facts, which itself constitutes sufficient ground for dismissal of the petition.

17) It is submitted that the petitioners had filed a series of writ petitions including OWP No: 2336/2018 and OWP No: 383/2019 and withdrew the aforesaid writ petitions the moment responses were filed by the official respondents, thereby misleading this Court and wasting the precious time of the Judiciary.

18) The respondents also submit that the impugned order/notice was issued to the petitioners in compliance with the directions passed by this Court in PIL No. 19/2011 titled *Prof. S.K. Bhalla vs. State of J&K & Ors.* Therefore, they contend, their actions are legal and in line with the judgment passed by this Court in *Prof. S.K. Bhallasupra*.

19) **Heard learned counsel for the parties, considered their submissions, and perused the record.**

VI. FINDINGS AND OBSERVATIONS

20) As regards the claim for proprietary rights under Government Order No. Rev/NDK/248 of 1981 dated 17.08.1981, the petitioners

failed to establish their claims under the said order because they were not lessees of the property at the time the Government Order of 1981 was issued. Their lease rights had expired in 1974, and the renewal was granted only later, in 1982, vide Order No. Rev/NDK/43 of 1982 dated 01.02.1982. Thereafter, the petitioners applied for grant of proprietary rights under the J&K State Lands (Vesting of Ownership Rights) Act, 2001 and accordingly in 2005, 03 Marlas and 269 sq. ft. were regularized under J&K State Lands (Vesting of Ownership Rights) Act, 2001 vide Order No. Rev/NDK/81/69-11 dated 19/9/2005 at the rate of Rs. 80 Lakh per Kanal and for the remaining land, the petitioners stopped paying ground rent from 2005. Hence, the plea of directing the respondents to accord similar treatment as given to other leaseholders under Government Order No. Rev/NDK/248 of 1981 dated 17.08.1981 holds no merit given that the petitioners were not lessees of the property at the time the Government Order of 1981 was issued. Since the petitioners applied for proprietary rights under J&K State Lands (Vesting of Ownership Rights) Act, 2001, they constitute a separate and distinct category, from the leaseholders who were granted proprietary rights under the Government No. Rev/NDK/248 of 1981 dated 17.08.1981 and hence cannot claim parity across two separate statutory schemes. Therefore, the plea of discrimination under Article 14 holds no merit.

- 21) The petitioners, after failing in their claim under the Government No. Rev/NDK/248 of 1981 dated 17.08.1981, succeeded in securing their proprietary rights under the J&K State

Lands (Vesting of Ownership Rights) Act, 2001 by virtue of which 3 Marlas and 259 sq. ft. were transferred to the petitioners as per the recommendations of the Price Fixation Committee in respect of the Section 12 of the J&K State Lands (Vesting of Ownership Rights) Amended Act, 2004.

- 22) However, the Hon'ble Division Bench has already declared the J&K State Lands (Vesting of Ownership Rights) Act, 2001 as void ab initio in **Prof. S.K. Bhalla v State of J&K & Ors. 2018 SCC OnLine J&K 273**, wherein the Court has held as under:

“The Jammu and Kashmir State Land (Vesting of Ownership to the Occupants) Act, 2001 as amended from time to time is completely unconstitutional, contrary to law and unsustainable. The legislation adversely impacts rights guaranteed to the people under Article 14 & 21 of the Constitution of India, was void ab initio from its very inception and there IA No. 48/2014 & CM Nos. 4036, 4065 of 2020 in could be no legal divesting of the lands from the ownership of the State and vesting the same with the occupants thereunder. As a result, the statement in Section 4 of the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) (Repeal and Savings) Act, 2018, that the Act does not affect anything already done under the Roshni Act is meaningless and of no assistance to the beneficiaries. All acts done under the Act of 2001 or amendments thereunder are unconstitutional and void ab initio. Section 6 of the General Clauses Act, 1897, would also not aid the beneficiaries therefore.”

- 23) Hence, any claim made by petitioners for proprietary rights on the basis of regularization under the Jammu and Kashmir State Land (Vesting of Ownership to the Occupants) Act, 2001, is not tenable in the eyes of law in view of the fact that all acts done with respect to the said Act have been held to be void ab initio retrospectively. Thus, the plea for quashing order No. Rev/NDK/81/69-II dated 19.09.2005 to the extent it accords proprietorship only over 3 marlas and 269 sq. ft. of land on payment of Rs. 80.00 lakhs per kanal stands redundant,

as the petitioners have already been divested of such rights by the judgement supra.

24) The material on record reveals that the petitioners were granted proprietary rights of 3 Marlas and 259 sq. ft. of the land under J&K State Lands (Vesting of Ownership Rights) Act, 2001 and for the remaining land, the petitioners stopped paying ground rent from 2005. The said lease expired on 01/04/2014 whereafter the petitioners failed to apply for a renewal, making them unauthorized occupants. Under S.O 688 dated 9/12/2022 read with Rule 11 of Land Grants Rules, 2022, outgoing lessees of commercial leases must handover possession and are liable to eviction under the J&K Public Premises (Eviction of Unauthorized Occupants) Act, 1988. In view of the same, Respondent no.5 issued Notice No. ACN/R/L/85 dated 27/10/2021 to the petitioners calling upon them to show cause why an eviction order may not be passed against them citing the judgement of the Court in the case of S.K. Bhalla v. State of J&K, 2018 SCC OnLine J&K 273.

25) Thus , this court is of the considered view that by virtue of the aforementioned judgement of Hon'ble Division Bench of this court, all the rights vested in the petitioners stand extinguished and therefore, Notice No. ACN/R/L/85 dated 27/10/2021, cannot be contested on the grounds of illegality and being issued without any power and authority, as Respondent No.5, being the Estate Officer is empowered by Section 4(1) of J&K Public Premises (Eviction of Unauthorized Occupants) Act, 1988 to issue such notice.

26) This Court is constrained to record that the petitioners have indulged in deliberate and conscious suppression of material facts. Their previous writ petitions, OWP No. 2336/2018 and OWP No. 383/2019, were withdrawn immediately after the respondents filed their replies, yet this vital fact has been intentionally concealed in the present proceedings. Such conduct is not a mere omission but a calculated attempt to mislead this Court and to get interim relief by deception. A litigant who attempts to secure orders of the Court by suppressing material facts forfeits all right to be heard, let alone to seek equitable or discretionary relief under Article 226. This Court cannot permit its process to be abused in such a brazen manner, and the petitioners' conduct warrants not only dismissal of the petition but also imposition of exemplary and deterrent costs.

27) The Supreme Court has repeatedly held that a litigant who approaches the writ court must disclose all material facts fully and frankly, and suppression of relevant information is sufficient ground to deny relief. In ***K.D. Sharma v. Steel Authority of India Ltd.***, (2008) 12 SCC 481, the Supreme Court held that as under:

“In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper

lesson. Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice".

28) Likewise, in *Dalip Singh v. State of Uttar Pradesh*, (2010) 2 SCC 114, the Court lamented the increasing tendency of litigants to obtain relief by falsehood or concealment and observed as under:

"In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

The Court further emphasized that constitutional jurisdiction under Article 226 is discretionary and must be denied to litigants who mislead the Court. Applying these settled principles, the deliberate suppression of previous writ proceedings by the petitioners clearly disentitles them from any equitable or discretionary relief.

VII. CONCLUSION

24) In view of the foregoing discussion and for the reasons recorded hereinabove, this Court is of the considered view that the petitioners are not entitled to any relief in either of the writ petitions. The prayer for quashing Order No. Rev/NDK/81/69-II dated 19.09.2005, or for directing consideration of their case under Government Order No.

Rev/NDK/248 of 1981 dated 17.08.1981, is legally misconceived and untenable. The petitioners, having failed to establish their eligibility under the Government Order of 1981 and having secured regularization only under the subsequently invalidated J&K State Lands (Vesting of Ownership to the Occupants) Act, 2001, cannot claim parity with other leaseholders governed under an altogether distinct statutory framework.

25) Equally, the challenge to Order No. ACN/R/L/85 dated 27.10.2021 issued by respondent No. 5 is devoid of any merit. The petitioners, upon expiry of their lease in 2014 and their failure to seek renewal, have rendered themselves unauthorized occupants. Respondent No. 5, acting in his capacity as the competent Estate Officer under Section 4(1) of the J&K Public Premises (Eviction of Unauthorized Occupants) Act, 1988, was well within his statutory domain in issuing the impugned notice. No jurisdictional error, illegality, or procedural infirmity is demonstrated.

26) This Court is further constrained to observe that the petitioners have approached this Court with unclean hands, having consciously and deliberately suppressed material facts, including the withdrawal of earlier writ petitions-OWP No. 2336/2018 and OWP No. 383/2019-after the respondents filed replies therein. Such suppression is a serious abuse of the process of law. A party seeking relief under Article 226 must come with utmost candor, fairness, and transparency. The petitioners' conduct strikes at the root of the equitable and

discretionary jurisdiction of this Court and disentitles them from any indulgence.

27). In view of the settled legal position, as reiterated by the Hon'ble Supreme Court in above-mentioned cases, a litigant who withholds material facts or attempts to mislead the Court forfeits his right to be heard on merits. Applying these principles to the present case, both the writ petitions merit outright dismissal.

28). Accordingly, both writ petitions are dismissed. Given the deliberate suppression and abuse of the extraordinary jurisdiction of this Court, the instant matter was a fit case for exemplary costs, however, taking a lenient view of the matter, keeping in view of the age of the petitioners, this Court is not inclined to saddle the petitioners with costs at this fag end of their lives, but regards it necessary to issue a firm warning to the petitioners that they should abstain from indulging in such a practice in future.

29). The interim directions passed in both the cases shall stand vacated. The respondents shall be at liberty to proceed further against the petitioners in accordance with law, rules, and the applicable statutory regime.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:

15-12-2025

Mubashir

- i. Whether the judgment is speaking; Yes
- ii. Whether the judgment is reportable: Yes/No