

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

Reserved on: 12.02.2025

Pronounced on: 21.02.2025

WP(C) No.2907/2022

ABDUL MAJID SOFI

... PETITIONER(S)

Through: - Mr. Syed Faisal Qadiri, Sr. Advocate with
Mr. Sikandar Hayat Khan, Advocate

Vs.

UT OF J&K AND OTHERS

...RESPONDENT(S)

Through: - Mr. Syed Musaib, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner, through the medium of present writ petition, has challenged communication bearing No.DCG/N(ACCTTS)/2021-22/1537 dated 23.03.2022, issued by Additional Deputy Commissioner, Ganderbal, in terms whereof property comprising six storied commercial complex, namely, "Namroze", located at Beehama Ganderbal has been taken over by the said respondent and a post facto sanction has been sought for the said action from respondent No.3. The petitioner has also sought a direction upon respondents No.4 and 5 to vacate the aforesaid commercial complex belonging to him and hand over the possession thereof to the petitioner with a further direction that the respondents be asked to pay rentals in favour of the

petitioner with effect from 15.02.2021 till its vacation by the aforesaid respondents @Rs12 per sqft.

2) As per case of the petitioner, he is owner of a six storied building constructed on land falling under Khasra No1340/044-min situated at Beehama Ganderbal. The said building was leased out by the petitioner to respondent No.6–Central University, Kashmir, by virtue of agreement dated 20.09.2018 for the purpose of operating hostel for its students and the said agreement came to be extended from time to time till 19.02.2021. In this regard copy of one of the rent agreements executed between petitioner and respondent No.6 on 26.11.2020 has been placed on record. According to the petitioner, the latest lease agreement between him and respondent No.6-University was to expire on 19.02.2021 and as per this agreement, respondent No.6 had agreed to pay rent @Rs.12 per sqft for the built-up area. Even prior to the execution of latest agreement dated 26.11.2020, respondent No.6 was in possession of the building in question.

3) It has been contended that as per the terms of the rent agreement dated 26.11.2020, respondent No.6 was to hand over possession of the building to the petitioner on 19.02.2021 but prior to that, the building was taken over forcibly by District Administration, Ganderbal, without any

WP(C) No.2907/2022 Page 2 of 15

consent of the petitioner. It has been averred that on 30.03.2021, a communication was issued by respondent No.6/Central University, informing the petitioner that in the last week of December, 2020, the District Administration, Ganderbal, has taken over the building and the same was not handed over back to the University, therefore, the University would not be in a position to pay rentals to the petitioner beyond 15th February, 2021. The petitioner was, accordingly, asked to take up the matter regarding payment of rentals with the District Administration, Ganderbal, beyond the aforesaid period.

4) According to the petitioner, he filed a civil suit seeking a declaration and injunction against the respondent Central University as well as against District Development Commissioner, Ganderbal, in which District Development Commissioner Ganderbal, filed a written statement taking a stand that the commercial complex belonging to the petitioner has not been taken over by District Administration, Ganderbal. It has been submitted that during the pendency of the suit, the Principal District Judge, Ganderbal, appointed a Commissioner for visiting the site and to report as to who is in possession of the building in question. The Commissioner reported that the building is in possession of the District Administration. It has also been

WP(C) No.2907/2022

submitted that in the meantime, impugned communication dated 23.03.2022 came to be issued by respondent No.5 seeking post facto sanction from respondent No.3 for occupying the building belonging to the petitioner and for release of rentals in his favour.

5) In view of the aforesaid changed circumstance, the petitioner is stated to have withdrawn the civil suit pending before the Court of Principal District Judge, Ganderbal, and filed the present writ petition.

6) It has been contended that the occupation of the building belonging to the petitioner by respondents No.1 to 5 is illegal and this action of the respondents is being challenged by the petitioner on the ground that he has been deprived of his right to property without adopting due process of law. It has been further contended that by seeking post facto sanction for illegal occupation of the petitioner's building, the occupation of respondents No.1 to 5 over the building in question cannot be legalised. It has been contended that the action of the respondents is without jurisdiction and authority of law. It has been further contended that in terms of the rent agreement between petitioner and respondent No.6, the said respondent was under an obligation to pay rentals to the petitioner for the

period the said building was under its occupation at the rates fixed in the rent deed and after the building has been taken over by District Administration, Ganderbal, they are also liable to pay rent on the same rates for use and occupation of the said building. It has been further contended that respondent No.6 was under an obligation to hand over the vacant possession of the building in question to the petitioner and it had no authority to surrender possession of the building to any person other than the petitioner.

7) Respondent No.6, Central University Kashmir, in its reply, has admitted that the building in question was in its possession for hostel purposes in pursuance of a rent deed executed between the parties with effect from 20th September, 2018, and that the said deed was extended from time to time. According to respondent No.6, the final extension in rent agreement was executed upto 19.02.2021. However, prior to expiry of said period, District Administration, Ganderbal, forcibly and without consent of respondent No.6 took over possession of the building in December, 2020, and the same was intimated to the petitioner by way of a communication. It has been further submitted that vide communications dated 03.03.2021 and 12.03.2021, District Administration, Ganderbal, was

WP(C) No.2907/2022 Page 5 of 15

requested to vacate the premises so that the students of the University are accommodated in their hostel which was being run from the building in question. It has been submitted that the petitioner was informed by the respondent University well in time about the occupation of the building by District Administration, Ganderbal, as such, the University is not liable to pay any rent to the petitioner after the building was taken over by the District Administration.

8) Respondents No.1 to 5 have contested the writ petition by filing their reply. In their reply, they have admitted that the building in question was earlier occupied by the Central University, Kashmir, for housing a boys hostel upto 20.12.2020 and that the rent for the period upto 20.12.2020 has been paid to the petitioner by the said University. It has been submitted that for providing accommodation to politically protected persons of District Ganderbal in view of the security reasons, the District Administration, Ganderbal, verbally took over the building in question without issuing any formal order/execution of agreement in favour of the petitioner. It has been further contended that the matter was taken up with Divisional Commissioner, Kashmir, vide communication dated 23.03.2022 followed by many other communications for grant of post facto sanction so as to

enable the said respondents to release payment of rentals to the petitioner. It has been further submitted that vide order No.80-DivCom of 2023 dated 20.02.2023, Divisional Commissioner, Kashmir, has accorded sanction to the allotment/placement of funds in favour of respondent No.4 to meet out the requirement of lease and boarding charges incurred for accommodating political protectees. It has also been contended that uniform rates as adopted by the Estates Department J&K, viz. room rent @Rs.356 per day per room, catering charges @Rs.225 per head per day during summer season and room rent @Rs.242 per head per day and catering charges @Rs.216 per head per day during winter season is to be paid in such cases. It has also been submitted that consequent upon allotment/placement of funds by the Divisional Commissioner, Kashmir, for the purpose, respondent No.4 has released a sum of Rs.63,85,438/ in terms of order 13.03.2023 and another sum of Rs.6,30,894/ in terms of order dated 28.03.2023 in favour of the petitioner on account of rent charges of the building in question for the period with effect from 21.12.2020 to 02.03.2023 in accordance with the rates notified by the Estates Department.

9) During the pendency of the writ petition, certain more developments took place regarding which the petitioner has

filed a supplementary affidavit. The same has been taken on record in terms of order dated 14.08.2024. In the supplementary affidavit it has been submitted that the respondent Additional Deputy Commissioner, Ganderbal, has issued communication dated 18.05.2024 to Senor Superintendent of Police, Ganderbal, directing vacation of the premises belonging to the petitioner within a period of two days and in terms of communication dated 20.06.2024 issued consequent thereto, the building in question stands handed over to the petitioner. However, it has been submitted that cause of action in favour of the petitioner with regard to payment of rentals towards illegal and forcible occupation of the building in question still survives. It has been further submitted that the petitioner has informed respondents No.4 and 5 vide his communication dated 20.07.2024, the details about the outstanding amount but the same has not been paid to him. The petitioner has filed another application bearing CM No.8383 of 2024 in which it has been submitted that electricity bill in the amount of Rs.22,43,510/ against the electricity connection installed in the building in question has been raised which is also liable to be cleared by respondents No.1 to 5.

10) I have heard learned counsel for the parties and perused record of the case.

11) The facts which are admitted by the parties in their pleadings are required to be noticed. It is an admitted case of the parties that the building in question belongs to the petitioner. It is also not in dispute that the said building was leased out by the petitioner to respondent Central University for housing boys hostel pursuant to a proper tendering process. The building in question was taken on lease by the Central University, as per its own showing, with effect from 20th September, 2018, and the lease agreement was extended from time to time and the latest extension was upto 19th February, 2021. It is also admitted case of the parties that the building in question was taken over by respondents No.4 and 5 on 20th December, 2020, for housing certain protected political persons. This was done without execution of any rent agreement and without any formal order. As per the supplementary affidavit filed by the petitioner, to which no reply has been filed by the respondents, the building has been handed over to him on 06.06.2024. In this regard, the petitioner has placed on record the copy of memo relating to hand over and take over which is signed by the petitioner and by Naib Tehsildar, Ganderbal, on behalf of respondents No.4 and 5. Thus, the building in question has remained in occupation of respondents No.4 and 5 with effect from 20.12.2020 to 06.06.2024. Another admitted fact is that

respondent No.6, Central University, Kashmir, has cleared the dues on account of electricity charges as well as rentals upto the period they were in the actual possession of the building in question. It is also an admitted case that neither the petitioner nor respondent No.6/Central University, has accorded consent to the handing over of possession of the building in question in favour of respondents No.4 and 5.

12) While the relief sought by the petitioner against the respondents for handing over possession of the building in question to him has been rendered infructuous due to subsequent developments, the question that remains to be determined is as to whether the petitioner is entitled to claim charges on account of use and occupation of the building in question from respondents No.4 and 5 with effect from 20.12.2020 upto 06.06.2024 and if so, at what rate?

13) So far as entitlement of the petitioner to use and occupation charges of the building in question is concerned, the same is not in dispute. In fact, respondents No.4 and 5, pursuant to interim direction dated 21.12.2022, have paid an amount of Rs.70,16,332/ covering the period from 21.12.2020 to 02.03.2023 as per the rates notified by the Estates Department of the Government. Thus, according to respondents No.4 and 5 they are liable to pay use and

occupation charges only from 03.03.2023 to 06.06.2024 to the petitioner at the aforesaid rates. The petitioner, on the other hand, claims that he is entitled to claim use and occupation charges at least at the rate which he was getting from respondent Central University in terms of the lease agreement along with charges relating to consumption of electricity by the occupants of the building.

14) It has been contended by learned counsel for respondents No.1 to 5 that the Government had adopted a uniform policy of hiring hotels and commercial buildings for accommodating protected persons and fixed rates in this regard and beyond this, the petitioner cannot claim any charges on account of use and occupation of the building in question. It has been submitted that the Estates Department of the Government has fixed room rent @Rs.356 per day per room during summer season and @Rs.242 per day per room during winter season. Similarly, catering charges @Rs.225 per day per head during summer season and @Rs.216 per day per head during winter season has been fixed by the Government and that respondents No.4 and 5 are prepared to clear the balance outstanding dues of the petitioner at the aforesaid rates.

15) The aforesaid contention of learned counsel for respondents No.1 to 5 is not tenable for the reason that it is

not a case where petitioner has consented to hiring of his commercial complex by the Government but it is a case where his building has been taken over forcibly by respondents No.1 to 5 without his consent, that too when a lease agreement between the petitioner and respondent No.6 was subsisting and the building was in occupation of the tenant i.e. respondent No.6.

16) Right to property is a constitutional right guaranteed under Article 300A of the Constitution of India and the same cannot be taken away without adopting due process of law but in the instant case, respondents No.4 and 5 have taken over possession of the building in question without even informing the petitioner not to speak of obtaining his consent. The petitioner was not aware as to who is in possession of the building in question and it is only during the course of civil suit filed by him before the learned Principal District Judge, Ganderbal, that he came to know from the report of the Commissioner that the building is occupied by the District Administration. To top it all, the then Deputy Commissioner, Ganderbal, filed a palpably false pleading before the learned Principal District Judge, Ganderbal, stating therein that the building in question is not in occupation of the District Administration. This stand of the Deputy Commissioner is contrary to the stand of the

WP(C) No.2907/2022 Page 12 of 15

respondents taken in this writ petition. This conduct of a responsible officer of the Government is reprehensible and shows that the said officer has no respect for rule of law. The officer concerned did not think twice before filing a false written statement before the learned trial court with a view to defeat the claim of the petitioner. The Courts generally trust the statements of public officers given by them in their pleadings at their face value as there is a presumption of correctness attached to the pleadings filed by the public officers in the course of their official duties but the present case is a classic example of a public officer filing misleading pleadings before the Court just to defeat the rightful claim of a litigant. The then Deputy Commissioner, therefore, deserves to be proceeded against for having filed a false pleading before the learned District Judge, Ganderbal.

17) The manner in which the property of the petitioner has been taken over by respondents No.1 to 5 by snatching it away from the tenant of the petitioner, who was in its actual possession without informing the petitioner, clearly goes on to show that respondents No.1 to 5 have not adopted due process of law while denying the petitioner possession of the building in question. In such like circumstances it is not open to respondents No.1 to 5 to fix the rent or occupation charges of the building in question unilaterally without

consent of the petitioner and without associating him in the process. The respondents could have fixed rent/occupation charges of the building in question only after holding negotiations with the petitioner and after following the due procedure prescribed under law and not unilaterally.

18) The measure of occupation charges to which the petitioner would be entitled to, in the facts and circumstances of the case, would be what a willing tenant would be prepared to pay for taking the building in question on rent. The material available on record in this regard is in the shape of rent agreement executed between the petitioner and respondent No.6. The same would be the guiding factor to quantify the charges which are payable by respondents No.1 to 5 to the petitioner for use and occupation of the building in question. As per clause (2) of the agreement dated 26.11.2020 executed between the petitioner and respondent No.6, the petitioner was getting rent @Rs.12 per sqft. (built up area) per month and as per clause (8) of the said agreement, the payment on account of electricity and water charges was to be borne by the tenant. Respondents No.1 to 5 are, therefore, liable to pay to the petitioner the rent at the aforesaid rate and they are also liable to clear electricity and water charges for the period during which they were in occupation of the building in question.

19) In view of the what has been discussed hereinbefore, the writ petition is allowed in the following manner:

- (I) Respondents No.1 to 5 are directed to pay to the petitioner rent @Rs.12 per sqft (built up area) for use and occupation of the building in question with effect from 21.12.2020 to 06.06.2024 less by the payment already released by them in favour of the petitioner. Besides this, respondents 1 to 5 shall also be liable to clear the electricity and water charges for the aforesaid period.
- (II) The learned Principal District Judge, Ganderbal, shall consider launching of appropriate criminal proceedings against the then Deputy Commissioner, Ganderbal, for having filed prima facie false written statement before the said Court in the suit filed by the petitioner.

20) A copy of this order be sent to the Court of learned Principal District Judge, Ganderbal, for information and compliance.

(Sanjay Dhar)
Judge

Srinagar,
21.02.2025
“Bhat Altaf-Secy”

<i>Whether the order is speaking:</i>	Yes/No
<i>Whether the order is reportable:</i>	Yes/No