

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 95/2021 c/w
WP(C) 140/2021
WP(C) 867/2021
WP(C) 1016/2021
WP(C) 1527/2021

Reserved on : 01.07.2022
Pronounced on: 05.07.2022

Vessu Welfare Committee and ors.
Sunny Raina and ors
Sandeep Koul and ors
Manju Lata Bhat and ors
Sanjeev Raina

.....petitioner(s)

Through :- Mr. Zaffar Shah, Sr. Advocate with
Ms. Humaira Shafi Advocate
Mr. A. Hanan Advocate
Mr. Salih Pirzada Advocate
Mr. S.F.Qadri Advocate

V/s

Relief and Rehabilitation Commissioner
and ors

.....Respondent(s)

Through :- Mr. Z.A.Qureshi Sr. Advocate with
Ms. Rehana Advocate
Mr. Usman Gani Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

WP(C) No. 95/2021

1 This petition is primarily directed against the communication of respondent No.3 (Tehsildar Relief & Rehabilitation (Migrants), Srinagar) dated 17.01.2021 directing the SHO, P/S Qazikund, Kulgam to register an FIR against the petitioners for having entered upon and

occupied the under construction quarters at Migrant Colony, Vessu, illegally. The petitioners, beside being aggrieved of the aforesaid communication, also seek a direction to the respondents to adopt a reasonable criteria for allotment of accommodation to the migrant employees appointed under Prime Minister's Special Package for rehabilitation and return of the migrants to the Valley. The petitioners have also voiced their grievance against the manner in which the respondents have made the allotment of 200 and odd units that have come up at Transit Camp Vessu, District Kulgam.

2 The Department of Relief and Rehabilitation (respondent Nos.1 to 3) as also respondent No.4 (JK PCC Ltd.) have contested the writ petition. In the reply affidavit filed on behalf of Relief and Rehabilitation Department i.e respondent Nos. 1 to 3, their precise stand is that the petitioners, who are already having pre-fab accommodation at Transmit Camp Vessu, have illegally and unauthorisedly entered into the under construction quarters and are, therefore, rank trespassers. They are not only required to be evicted from their unauthorized occupation, but are also required to be proceeded for committing criminal trespass over the public property. The respondents have justified the communication of respondent No.3 directing the SHO, P/S Qazikund to register a formal FIR against the petitioners and others, who have taken law into their own hands and committed the offence of criminal trespass.

3 The JK PCC in its reply has submitted that being an executing agency, it has constructed the Government quarters meant for migrant employees appointed under Prime Minister's package and, therefore, ostensibly there is no grievance raised by the petitioners in their petition against it.

WP(C) No. 140/2021

4 In this petition also, the primary grouse of the petitioners is against the communication of respondent No.3 dated 17.01.2021 requesting the SHO Police Station, Qazikund to register an FIR against the petitioners for having illegally entered upon, locked and occupied the under construction quarters at Migrant Colony Vessu. Additionally, the petitioners have called in question a communication of the Relief and Rehabilitation Commissioner (M), Jammu whereby the Executive Engineer, Power Development Department, Anantnag Division has been requested to initiate disciplinary action against the petitioners for having committed misconduct under Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 ['Rules of 1956']. Rest of the reliefs claimed in the petition are, by and large, the same as prayed for in WP(C) No. 95/2021.

5. The reply of Department of Relief and Rehabilitation is on the same lines of the reply submitted to WP(C) No. 95/2021.

WP(C) No. 867/2021

6. The petitioners in this petition are aggrieved of and have assailed the communication of respondent No.2 bearing No. DCRR(M)/Sgr/21/28-32 dated 15.04.2021 whereby the Executive Engineer KPDCL, Kulgam/Qazikund has been requested not to provide any electric connection to the illegal occupants of the under construction quarters at Migrant Colony Vessu. The impugned communication is an offshoot of the alleged trespass by the petitioners in the under construction quarters erected by the respondents at Transit Camp, Vessu, District Kulgam. They are also aggrieved of another communication dated 17.04.2021 issued by the Relief and Rehabilitation Commissioner (M)

Jammu to the Deputy Commissioner, Kulgam requesting the latter to intervene in the matter and direct the officers of KPDCL and Jal Shakti Departments not to allow any illegal connection of electricity or water supply to any of the under construction blocks which have been illegally and unauthorisedly occupied and locked by the petitioners. Reply of Department of Relief and Rehabilitation is similar to the reply filed to the earlier petitions to which this Court will advert to a bit later.

WP(C) No. 1016/2021

7. In this petition, the petitioners claim to be migrant employees having been appointed under Prime Minister's Package for return and rehabilitation of Kashmiri migrants to Kashmir Valley. They are staying in the pre-fab accommodation allotted to them at the Transmit Colony Vessu, District Kulgam. Their positive case is that they have not taken law into their own hands and have not occupied the under construction quarters illegally and unauthorisedly like some of their colleagues, but they want a direction to the respondents to strictly adhere to Government Order No.29-DMRRR of 2018 dated 09.05.2018 while making allotments of the newly constructed quarters. The petitioners herein also pray for a writ of certiorari to quash the order issued by respondent No.3 bearing No. RRCM/P&S/2020-21/195-199 dated 21.01.2021 by virtue of which 208 units of accommodation existing at Transit Camp Vessu have been allotted to different migrant employees. This petition is contested by the Department of Relief and Rehabilitation and in the reply filed on behalf of respondent Nos. 1 to 4, it is submitted by the respondents that the impugned allotments have been made by them strictly as per the criteria laid down in the Government order dated 09.05.2018 (supra).

WP(C) No. 1527/2021

8. This petition by a single petitioner namely Sanjeev Raina is directed against the order dated 26.07.2021 passed by respondent No.5 whereby the appeal preferred by the petitioner under Section 12 of Jammu and Kashmir Public Premises (Eviction of unauthorized Occupants) Act, 1988 [‘the Act of 1988’] against the eviction notice dated 08.06.2021 and eviction order dated 15.06.2021 has been dismissed. The petitioner submits that respondent No.5 has not considered the issues raised in the appeal in proper perspective and has dismissed the appeal by passing the impugned order which is totally illegal, arbitrary and *de hors* the provisions of the Act of 1988.

9. The Department of Relief and Rehabilitation by filing its objections has sought to justify the impugned order, urging primarily that the petitioner being a rank trespasser in the Government property cannot be termed as ‘unauthorized occupant’ for the purpose of proceeding under the Act of 1988. It is also contended by the respondents that the procedure laid down in the said Act has been scrupulously followed and the order impugned passed by the District Magistrate is unexceptionable.

Rival contentions & arguments.

10. In all these petitions, this Court is called upon to determine a dispute which can be aptly termed as “**migrants vs migrants’ dispute**”. Two sets of migrant employees, who are working in the District of Kulgam of Srinagar Division are fighting for allotment of accommodation in the new residential complex erected by the respondents to accommodate the migrant employees appointed under Prime Minister’s employment package and serving in the District of Kulgam in various departments of UT of Jammu and Kashmir. One set of these employees represented by the

petitioners in all these petitions, belongs to the category of those migrant employees who have been working in the valley for the last about 10 years and have been staying in the prefabricated accommodation provided by the Government at Transit Camp Vessu, Kulgam. The other set of migrant employees is constituted of the category of those migrant employees who too have been appointed under Prime Minister's employment package, but are not provided any Government accommodation by the respondents. They are staying in the rented accommodation in and around their place of posting. They are such employees who are waiting for the new accommodation to come up to so that they too could be accommodated like the petitioners. The dispute, however, has stemmed from the fact that the petitioners, who are already staying in the prefab accommodation allotted at the Transit Camp Vessu for the last 10 years, are now complaining of inadequate facilities in the accommodation and, therefore, want the respondents to consider them for allotment of the new accommodation that has come up at the Transmit Camp, Vessu, Kulgam itself.

11. It appears that the petitioners apprehending that the new accommodation would be allotted by the respondents to those migrant employees who are staying in the rented accommodation in the valley and such employees would be better placed than them, they decided to take law into their own hands and forcibly occupied the under construction quarters in the new complex.

12. During the course of arguments, learned counsel appearing for the petitioners, who have unauthorisedly occupied the public premises, could not justify their action except by pleading that the petitioners were left to fend for themselves in the inadequately furnished accommodation for the last more than 10 years. The prefabricated accommodation in the

transit camp allotted to the petitioners sans basic facilities and, therefore, the petitioners had no option, but to occupy the residential quarters in the new complex that had come up only to provide adequate and suitable accommodation to the migrant employees like the petitioners. The grievance of these petitioners, who have trespassed in the public property, is that the respondents are under an obligation to first accommodate them in the new residential complex before considering other migrant employees waiting for allotment of Government accommodation. In short, their grievance appears to be that the migrant employees, who are similarly situated with them, but were appointed later in point of time, cannot be preferred in the matter of allotment of better accommodation leaving the petitioners to rot in the prefabricated tenements.

13. *Per contra*, the stand of the respondents, as set out in their reply affidavit, is that the Prime Minister's employment package for return and rehabilitation of kashmiri migrants to Kashmir valley was implemented by the Government of Jammu and Kashmir pursuant to a Cabinet Decision No. 130/11/2009 by issuing a Government Order No. Rev/MR/141 of 2009 dated 26.10.2009. It is submitted that in compliance to the aforesaid Cabinet Decision, the Government provided employment opportunity to 15000 unemployed migrant youths, out of which 6000 youths were to be accommodated in the State Government jobs. There was a provision for construction of transit accommodation at three sites at the costs of Rs.20.00 crore each. It is in pursuance of this initiative of the Government, a good number of migrant youths were employed in various departments in Kashmir Valley beginning from the year 2010. It is further submitted that with a view to accommodate the migrant employees appointed in the valley, transit accommodations were constructed in the year 2009 which

consisted of prefab structure comprising of **two rooms, attached kitchen with modern fitment and bathroom**. Initially, the prefabricated tenements were allotted to these employees on sharing basis. However, during the year 2011-12, many of the migrant employees which included the petitioners herein were allotted independent accommodations. The petitioners have been staying in the aforesaid accommodation for the last more than 10 years without any grievance. It is further the case of the respondents that the construction of concrete multi storeyed building of G+3 type for migrant employees in the valley came to be conceptualized in the year 2015 under the name of PMDP-2015. It is, thus, urged that since each of the petitioners has already been provided with the possession of full accommodation/quarter comprising of two rooms, attached kitchen with modern fitment and bathroom in phase (1) and (2) for the past ten years, as such, the petitioners cannot be held entitled to another accommodation which is meant for those migrant employees who too are appointed under Prime Minister's employment package, but are staying in the rented accommodation due to the non-availability of Government accommodation. These new quarters, it is submitted by the respondents, have been constructed to accommodate such government employees. It is contended that with a view to give effect to the allotment of newly constructed quarters on a rational basis, the Government has framed a criteria in terms of Government Order dated 09.05.2018 (supra). The petitioners in none of the petitions have called in question the said Government Order. That being the position, it is argued that the respondents are well within their right and competence to make the allotments strictly as per the criteria laid down in the aforesaid Government order. It is, thus, submitted that the impugned order of allotment cannot be questioned by the

petitioners on any ground whatsoever, more particularly, on the grounds urged in WP(C) No. 1016 of 2021.

Analysis & deliberation.

14. Having heard learned counsel for the parties and perused the material on record, I am of the view that the petitioners other than petitioners in WP(C) No. 1016/2021 have no right to invoke the extraordinary writ jurisdiction of this Court vested in it by Article 226 of Constitution of India. The writ jurisdiction vested in this Court under Article 226 of the Constitution is an equitable jurisdiction and this Court shall refuse to exercise such jurisdiction in favour of those who take law into their own hands. Entertaining these petitions and granting relief prayed for would be nothing short of promoting lawlessness.

15 In the instant case, there is no dispute with regard to the fact that the petitioners have, without any authority or authorization, entered the under construction quarters raised at Transit Camp, Vessu by the JK PCC ltd for providing additional accommodation to the migrant employees serving in the District of Kulgam. All the petitioners are in possession of the accommodation allotted to them in the year 2010 and afterwards.

16 It is true that accommodation provided to the petitioners is a prefab structure, but it consists of two bedrooms, attached kitchen with modern fitment and bathroom. The petitioners, if at all, they were dissatisfied with the accommodation allotted to them or they were of the view that the accommodation allotted to them sans basic amenities, they could have thrown challenge to Government order dated 09.05.2018 (supra) laying down criteria for allotment of new accommodation to the migrant employees, but they thought that they are law unto themselves and being migrants are permitted to violate law and occupy the government

property wherever they find it existing. I cannot help appreciating the guts of the petitioners, who, while being in regular government service, dared to enter the government quarters without having any allotment or authorization from any authority of the Government whatsoever. They occupied, locked and took possession of the residential quarters constructed by the Government while retaining their earlier accommodation. Such lawlessness, if permitted by the Courts, will lead to chaos in the society which, in turn, would put the rule of law in peril. It is, thus necessary for the police power of the State to come heavily on those for whom the breach of law is like playing with a toy. They think that they will commit the offence of criminal trespass and get away with it by coining excuses like the poor conditions of their prefab accommodation. Not only the petitioners took law into their own hands, and while being public servants committed the offence of criminal trespass, but they had the cheeks to approach this Court to seek protection and ratification of their illegitimate act amounting to commission of a criminal offence. In these circumstances, I am of the firm opinion that petitioners do not deserve any lenience or protection from the Courts of law. The Tehsildar Relief and Rehabilitation (migrants) Kashmir was absolutely correct and otherwise duty bound to approach the SHO concerned to lodge an FIR against those, who had trespassed in the Government property during the intervening night of 16/17 of January 2021. The Relief and Rehabilitation Commissioner, Jammu has rightly called upon the employers of the petitioners to initiate disciplinary action under the provisions of the Rules of 1956 for the acts and omissions of the petitioners. The respondents, asking Deputy Commissioner to ensure that trespassers are not provided electricity or water connection, committed no illegality, rather upheld the rule of law.

17. I have no doubt in my mind and the legal position in this regard is well settled that a public servant committing a criminal offence of trespassing in the Government property is not only liable to be proceeded under criminal law, but is also liable to be proceeded for disciplinary action. I, therefore, find no merit in WP(C) Nos. 95/2021, 140/2021 and 867/2021.

18. So far as WP(C) No. 1016/2021 is concerned, the short grievance projected by the petitioners is that the respondents are not adhering to their own order laying down a criteria for allotment of accommodation laid down in Government Order dated 09.05.2018 (supra). It is alleged that order dated 21.01.2021 issued by the Relief and Rehabilitation Commissioner (M) Jammu is more in breach than in compliance with the Government Order dated 09.05.2018 (supra) and, therefore, deserves to be quashed.

19. I have given my anxious consideration to this aspect of the matter. It is the specific case of the respondents, as set out in their objections, that 208 units of accommodation at Transit Camp Vessu District Kulgam which, in January 2021, were allotted to different beneficiaries are strictly as per the criteria laid down in the Government order 09.05.2018 (supra). This, however, is disputed by the learned counsel appearing for the petitioners. It is contended on behalf of the petitioners that in the allotments made in terms of the impugned order dated 21.01.2021, there are several infirmities, in that, in some cases, a single family has been allotted more than one accommodation. Be that as it may, the petition i.e WP(C) No. 1016/2021 raises a disputed question of fact of complicated nature which cannot be gone into by this Court in these proceedings. However, the respondents shall do well to revisit the

impugned order dated 21.01.2021 and shall weed out the infirmities and illegalities, if any committed, deliberately or inadvertently while making the allotments in favour of 208 beneficiaries. The relief and Rehabilitation Commissioner (M), Jammu shall provide an opportunity of being heard to the petitioners of this petition to point out the infirmities or irregularities, if any, committed while making allotments in terms of impugned order dated 21.01.2021. The Commissioner concerned shall pass a speaking order dealing with the grievances, if any, projected by the petitioners before him either in writing or orally. Nothing more is required to be done in this petition.

20. In so far as WP(C) 1527/2021 is concerned, it appears that against the petitioner, who had trespassed in the government property, an action was initiated under Section 4 of the Act of 1988. The petitioners was served with a notice under section 4 (1) of the said Act by the Estates Officer (Tehsildar Relief and Rehabilitation M, Srinagar) calling upon him to show cause within a period of five days from the issuance of the notice as to why the order of eviction should not be made against him. When the petitioners failed to submit any reply, eviction order was passed by the Estates Officer on 15.06.2021 directing the eviction of the petitioner, Smt. Shakti Bhat and all the persons, who may be in unauthorized occupation of Quarter No. H-16 or any part thereof within a period of 7 days. The petitioner and other illegal occupants were given seven days time to vacate the premises, failing which, the coercive measures were directed to be taken to evict them. It is this order which was called in question by the petitioner before the District Magistrate, Kulgam [‘the appellate authority] under Section 12 of the Act of 1988. The appellate authority has considered the appeal and has, by a speaking order, dismissed the same.

The appellate authority has come to the conclusion that the contention of the petitioner that he was served with a show cause notice of five days in stead of statutory period of 7 days, as such, all eviction proceedings leading to his eviction are vitiated, is not tenable in law for the reason that the petitioner though was given only five days' time to show cause against his proposed eviction, yet he failed to submit any reply even after the expiry of seven days from the date of service of notice. In this way, no prejudice is caused to the petitioner.

21. No exception can be found with the view taken by the appellate authority i.e District Magistrate, Kulgam. The petitioner is a rank trespasser in the public property and, therefore, 'unauthorised occupant' within the meaning of the term under Section 2(g) of the Act of 1988. However, in the instant case, the petitioner does not deny, rather admits that he entered the public premises without any authority and unauthorisedly. That should put a quietus on the grievance of the petitioner.

Conclusions.

22. In view of the aforesaid, WP(C) Nos. 95/2021, 140/2021, 867/2021 are found devoid of any merit and the same are, accordingly, dismissed. The respondents shall take requisite steps to evict all the unauthorized occupants of the new residential quarters in the newly constructed complex at Transit camp Vessu. This is so directed as the petitioners do not dispute that they have entered the public premises without any authority. The petitioners shall be provided with a week's time to vacate the premises, failing which, the respondents shall evict them by using as much Force as may be required to accomplish violence free eviction of the petitioners. In compliance to the communication of the Tehsildar Relief and Rehabilitation (M), Srinagar, the SHO concerned shall

register an FIR, if not already registered, and shall initiate investigation in the matter. The employers of the petitioners are also free to initiate disciplinary proceedings in terms of the Rules of 1956 against the petitioners for committing misconduct.

23. WP(C) 1016/2021 is disposed of by directing the Commissioner concerned to give a fresh look to the order of allotment impugned in the writ petition to find out any infirmities or irregularities in the allotments as pointed out by the petitioners. He shall do well to hear the petitioners, if they so desire, in person and consider their grievance, if presented before him in writing within a period of two weeks from today. It would be appreciated if the Commissioner consider the grievance, if any, projected by the petitioners with regard to the infirmities and irregularities in the matter of allotments and passes a speaking order in this regard within a period of four weeks from the date the grievance in writing is projected or orally made before the Commissioner. All the future allotments to the new accommodation shall be made strictly in terms of Government order dated 09.05.2018 (supra).

24. WP(C) No. 1527/2021 is, however, dismissed. The petitioner in this petition, who is similarly situated with the writ petitioners of WP(C) No. 95/2021 shall be governed by the judgment rendered in WP(C) Nos. 95/2021, 140/2021 & 867/2021.

Disposed of in the above terms.

(SANJEEV KUMAR)
JUDGE

Srinagar
05.07.2022
Sanjeev

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