

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

**OWP No. 640/2005
C. M. P nos. 858/2005 & 53/2006**

Date of decision: 29.10.2008

Pushkar Nath Koul Vs. State of J&K and ors

Coram:

MR. JUSTICE J. P. SINGH, JUDGE.

Appearing Counsel:

For Petitioner(s) : Mr. Virender Bhat, Advocate.
For Respondent(s) : Mr. A. H. Qazi, AAG for
respondent nos. 1 & 2.

- i) Whether approved for reporting
in Press/Journal/Media : **Yes**
- ii) Whether to be reported
in Digest/Journal : **Yes**
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Claiming to be one of the Co-sharers of two houses situated at 16-Zainder Mohalla Habba Kadal, Srinagar-Kashmir and the land underneath and appurtenant thereto, Pushkar Nath Koul, the petitioner, has filed this writ petition seeking issuance of a writ of mandamus directing the respondents to cause the eviction of any occupant of any part of the property and not

permission for sale of the property in parts or in the name of individual co-sharers.

The case set up by the petitioner in his writ petition is that Gopi Nath Razdan and Maharaj Krishan Razdan, respondent nos. 3 & 4, the other co-sharers of the property in question had executed a Power of Attorney with respect to their 35% share of the four storied house in favour of Mir Shafiq Ahmed and were in the process of inducting him in possession of part of the house and this arrangement of respondent nos. 3 & 4 was designed to defeat the provisions of the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sale) Act, 1997(hereinafter to be referred as the "Act"), the official respondents were therefore, required to be restrained from granting permission to respondent nos. 3 & 4 for sale of the property.

On this writ petition coming up for motion hearing, petitioner's counsel, Mr. Virender Bhat submitted that the act of respondent nos. 3 & 4 in executing a Power of Attorney in favour of

. 5 authorizing him to look after, manage and control the property covered by the power of attorney and to take all steps for its betterment, up-liftment, protection and watch and ward including seeking permission from authorities to sell, lease out and mortgage the property was in violation of the provisions of the Act. Referring to the provisions of Sections 3, 4 & 5 of the Act in support of his submissions, learned counsel projects the petitioner's case for seeking directions as prayed for in the writ petition.

Mr. Qazi, learned State counsel, on the other hand, submitted that the dispute raised by the petitioner through his writ petition being an inter-se dispute between the co-sharers, the provisions of the Act would not apply for resolution of such disputes. He submitted that the writ petition was based on mere apprehensions and was as such not maintainable.

I have considered the submissions of learned counsel for the parties and gone through the provisions of the Jammu and Kashmir Migrant

Property (Preservation, Protection and Restraint on Distress Sale) Act, 1997.

Section 3 of the Act contemplates restriction on alienation of immovable property of migrants. Alienation, as defined in Section 2 means sale, gift, and mortgage with possession or exchange excluding gift in favour of an heir. Section 4 requires the District Magistrate to take all such steps as may be necessary for preservation and protection of such immovable property.

Eviction of un-authorized occupants of the migrant property is provided for in Section 5 of the Act.

Petitioner has not laid any basis in his writ petition to seek the relief of issuance of direction against the official respondents to cause the eviction of any particular occupant or occupants of any part of the property and to refuse permission for sale of property in parts or in the name of individual co-sharers because he has neither complained of any one's un-authorized occupation over his property nor has he alleged

ad applied for seeking permission for alienation thereof.

In the absence of any such case having been set up in the writ petition, the petitioner may not be entitled to seek the relief of issuance of directions against the official respondents to direct eviction of any person who may occupy the migrants' land and refuse permission for alienation of land.

Petitioner has filed this writ petition on mere apprehensions, which would not, in my opinion, provide him any cause of action to maintain his writ petition, which even otherwise is misconceived as the dispute raised by him in the writ petition is a pure and simple dispute inter-se co-sharers of the migrant property determination and resolution whereof is not contemplated by any of the provisions of the Act, which are intended to preserve, protect and guard against distress sale of the immovable property of the migrants. Petitioner has not raised any such complaint in the writ petition which may require invoking the provisions of the Jammu and Kashmir Migrants



erty (Preservation, protection and
Restrain on Distress Sales) Act, 1997.

No case for admission of the writ petition has thus been made out by the petitioner. This writ petition is, accordingly, dismissed.

(J. P. Singh)
Judge

JAMMU:
29.10.2008.
Tilak, CS