

# **HIGH COURT OF JAMMU AND KASHMIR**

AT JAMMU

CDLOW no. 3/2012

and

LPAOW no. 17/2012, CMA no. 26/2012

Date of order: 11.03.2013

Janta Dal (United)

v

State of J&K & Ors.

---

**Coram:**

**Hon'ble Mr. Justice M. M. Kumar, Chief Justice**

**Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge**

---

**Appearing counsel:**

For the appellant(s) : None.

For the respondent(s): Mr. F. A. Natnoo, Advocate.

---

- |   |     |
|---|-----|
| i) Whether to be reported<br>Press, Journal/Media | Yes |
| ii) Whether to be reported in<br>Digest/Journal   | Yes |
- 

M.M. Kumar, CJ

1. The instant appeal filed under Claus 12 of the Letters Patent calls in question the judgment and order dated 25.11.2012 rendered by the learned Single Judge dismissing OWP no. 792 of 2006.

2. It appears that one Mr. Sanjesh Gupta, one time State Wing President of Janta Dal (United) was allotted the premises in question. On the allegations that provisions of Rule 14 of the Jammu and Kashmir State Evacuees (Administration of Property) Rules, Svt. 2008 (for brevity the Rules), has been violated a show cause notice was issued to him as to why the allotment be not cancelled. The show cause notice spelt out the allegations that he had sublet the

premises and was earning rent from the sub-tenant which violated Rule 14. The show cause notice was duly served upon him and it was also pasted on the main door of the premises in question which is one of the stipulated modes of service under the rules. Sh. Sanjesh Gupta did not chose to send any reply to the show cause notice which resulted in passing of eviction order dated 13.08.2005. The operative part of the order reads as under:

“I have gone through the report of the field agency besides have perused the record which establishes that allottee Shri Sanjesh Gupta has sublet the house in question and has kept it in disuse. Moreso he is in arrears as amount of Rs. 3900/- upto ending 7/2005 is outstanding against him as rent, as such, he has violated the rules 14 of the rules framed under the Evacuees’ Property Act, 2006. Therefore, his allotment in respect of the said house is liable to be cancelled, which is hereby cancelled forthwith and the Field Inspector concerned be asked to resume its possession and Assistant Engineer of the department to execute necessary repairs of the same. The arrears outstanding against previous allottee be recovered as arrears of Land Revenue.”

**(Emphasis added)**

3. Sh.Sanjesh Gupta did not question the eviction order before the prescribed authority under the J&K Evacuees (Administration of Property) Act, Svt. 2006. However, he preferred a civil suit seeking permanent prohibitory injunction restraining the Evacuee Property Department from evicting him from the premises in question. During the pendency of the civil suit, Sh. Sanjesh Gupta, ex president

of State Wing of Janta Dal (United) died and the present appellant did not prosecute the suit.

4. The present appellant i.e., Janta Dal (United) through its president Inder Mohan Tar Singh challenged the order of eviction dated 13.08.2005 passed by the Custodian by filing an appeal/revision before the J&K Special Tribunal. The Tribunal treated the appeal as revision and after condoning the delay in its filing dismissed the same on 31.10.2006.

The operative part of the order of the Tribunal reads thus:

“The aforementioned house came to be allotted to Sanjesh Gupta for office purpose. He has put in his designation as President, Janta Dal(United) in the lease agreement. It is admitted fact that the office of Janta Dal (United) was being run in the building; but some time early 2005 the house came to be utilized as residence by the private persons working in K. C. Plaza and Hotel Mansar. This is violation of the lease agreement and Evacuee property rules. Sh. Sanjesh Gupta was put on notice by the Evacuee Property Department. The service of notice as required under law was made under Sanjesh Gupta by one of the methods prescribed i.e. pasting of notice on the locked door of the house. The service aspect stands further supported by the very claim of the petitioner herein that the office was running and continues to be run in the premises. If it be so, Sanjesh Gupta shall be deemed to be notified properly a fact that he did not file any objections to the eviction notice would further lend credence to the issuance of eviction order by Evacuee Property Department. Another material fact that Sanjesh Gupta filed a suit for prohibitory injunction before the court of Second Addl. Munsiff, Jammu further supports the plea of the Evacuee Property Department that he had full knowledge of the proceedings and had filed a suit in order to prohibit his eviction. The suit apparently is still pending and Sanjesh Gupta expired in the meanwhile and the Evacuee Property Department took over the house and started repairs etc. The petitioner

herein who has been appointed vide order dated 14.8.2006 decidedly came to be appointed 14 months after the order of eviction was passed. He could not have been notified before eviction.

Another material fact is that to me it does not appear that the house was allotted to Sanjesh Gupta in his capacity as President, Janta Dal (United). Had it been so, the allotment would have been in the name of President through Sanjesh Gupta and not to Sanjesh Gupta by name.

It is, therefore, clear that the allotment to Sanjesh Gupta is in his private capacity and only the legal heirs of Sanjesh Gupta had locus standi to challenge it after his death. The present petition, therefore, being without merit is hereby dismissed."

5. A perusal of the aforesaid extract of the order would show that the appellant had no *locus standi* because the allotment of the house was made in favour of Sh. Sanjesh Gupta in his individual capacity. He was not allotted the premises as State President Janta Dal (United) and, therefore, only his legal heirs could have the *locus standi* to challenge the order after his death. It has also been pointed out that since 2005 the house was not being used as office of Janta Dal (United) and it had become the residence of private persons working in K. C. Plaza and Hotel Mansar, which was flagrant violation of the lease agreement and the Rules. Even the notice served upon Mr. Gupta failed to evoke any response from him and the suit has been kept pending as the same is not being pursued. The order passed by the Tribunal was challenged before the learned Single Judge in OWP no. 792 of 2006, relatable to the

instant appeal. The writ petition has been dismissed by the learned Single Judge by reiterating what has been stated by the Tribunal.

6. This appeal has been filed along with an application seeking condonation of 35 days delay. The appeal came up for consideration on 12.3.2012 whereafter the appellant had remained absent on 11.4.2012, 29.12.2012, 21.02.2013 and 04.03.2013. Today also no one has put in appearance in support of the application seeking condonation of delay. However, on behalf of the respondent Mr. F. A. Natnoo, has put in appearance.

7. We have heard the learned counsel for the respondents and are of the view that order dated 31.10.2006 passed by the Special Tribunal, as affirmed by the learned Single Judge, does not suffer from any legal infirmity. The lease agreement dated 09.12.2003 was admittedly entered into by one Sh. Sanjesh Gupta. For some time the premises were utilized as office premises for Janta Dal (United). In early 2005, the premises were occupied by employees of K. C. Plaza and Hotel Mansar who started paying rent to Sh. Sanjesh Gupta. The property which was given on lease to Sh. Sanjesh Gupta by the Evacuee property Department was being misused by subletting the same which was patent violation of Rule 14 of

the Rules. Even a show cause notice issued by the Evacuee Property Department did not evoke any response from Sh. Sanjesh Gupta. Eventually the order of eviction was passed on 13.08.2005 during lifetime of Sh. Sanjesh Gupta, stating that Rule 14 had been flagrantly violated, therefore, no other person or the Janta Dal would have any *locus standi* to maintain the proceedings before this Court or before any other fora. The appellant cannot claim to be successor-in-interest. Accordingly, we of the view that there is no legal infirmity in the opinion expressed by the learned Single Judge warranting admission of the appeal. The appeal is wholly without any substance and is thus liable to be dismissed.

8. In view of the above, the appeal fails and the same is dismissed. Consequently the application seeking condonation of delay is also dismissed. We further direct that respondents shall take possession of the property expeditiously, preferably within one month. A report in that regard be sent to the Registrar General and the same shall be placed on record.

**(Dhiraj Singh Thakur)**  
Judge

**(M. M. Kumar)**  
Chief Justice

**Jammu**  
**11.03.2013**  
Anil Raina, Secy.

