

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

LPAOW No. 156/2015
MP No. 01/2015

Date of Order: 05.10.2015

Ghulam Mohammad Sheikh, Age 49,
S/O Haji Sona ullah Sheikh
R/O Chotipora Tehsil Handwara.

.....Appellant

versus

1. State of Jammu and Kashmir through
Commissioner/ Secretary to Govt.
Revenue Department, Civil Secretariat Srinagar.
2. Deputy Commissioner, Kupwara.
3. Additional Deputy Commissioner, Kupwara.
(Administrator MCM Handwara/Kupwara).
4. Tehsildar Handwara.
5. Naib Tehsildar (Executive Magistrate Ist Class)
Handwara.
6. Executive Engineer (R & B) Division Handwar.
7. Assistant Executive Engineer, (R&B)
Sub Division Handwara.
8. Mushtaq Ahmad Bakshi
s/o Haji Ghulam Mohammad Bakshi
r/o Maidan Chogal Handwara Distt. Kupwara.

.....Respondents

Coram:

Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice
Hon'ble Mr. Justice Ali Muhammad Magrey, Judge

Appearing counsel:

For the Appellant(s) : Mr. Imtiyaz Ahmad Sofi, Advocate.
For the Respondent(s) : Mr. N. H. Shah, AAG.
Mr. G. A. Lone, Advocate.

N. Paul Vasanthakumar, CJ

1. This appeal is filed against the order of the learned Single Judge made in OWP no. 878/2015, dated 01.07.2015 wherein a direction was issued to the Tehsildar Handwara to give a fresh look on the order passed bearing in mind the report submitted by the Committee regarding the eviction of the appellant on the ground that building owned by the 8th respondent, where the appellant is staying, is not safe and the 8th respondent in the writ petition to make proposal for reconstruction of the building with the consent of the appellant and till the decision is taken, position on spot, as on date, was directed to be maintained.
2. The brief facts necessary for disposal of this appeal are that the appellant alleges to be the owner of land measuring 1 kanal and 4 ½ marlas and shops existing thereon. The appellant filed writ petition OWP No. 725/2015 seeking directions to the official respondents to proceed ahead with the dismantling process of the alleged dilapidated structure and to complete the said process within some stipulated period of time. The writ petition was disposed of by the learned Single Judge of this Court by order dated 27.04.2015 by directing the

respondents to accord consideration to the representation claimed to have been made by the appellant and take a decision within four weeks. The official respondents, in compliance to the order passed by the learned Single Judge on 27.04.2015 in OWP no. 725/2015, issued notice to the 8th respondent, who is the alleged tenant of two shops in the above said property, requiring him to vacate the shops along with the materials placed therein failing which the expenses for vacating the shops shall be borne by the 8th respondent. Aggrieved of the notice so issued the 8th respondent filed writ petition OWP No. 878/2015 challenging the notice issued for vacating the shops and for directions to the respondents not to interfere in the conduct of business in two shops located in the structure existing on land falling under survey nos. 2651/1558 situate at Bazar Handwara and for writ of prohibition, prohibiting the respondents 1 to 7 from initiating any proceedings with regard to the 8th respondent from the disputed shops.

3. It is seen from the records that the appellant herein initially filed a suit for eviction and recovery of rent against the 8th respondent before the learned Sub Judge Handwara. The said suit being beyond the pecuniary jurisdiction of that Court, the plaint was returned to the

plaintiff-appellant for its presentation before the appropriate Court. Thereafter the appellant filed suit for eviction and recovery of rent before the learned Principal District Judge Kupwara and the said suit is pending. During the pendency of the suit the appellant approached the Tehsildar contending that the building in question have to be declared as unsafe for human use. As there was dispute a Committee was constituted by the Deputy Commissioner Kupwara consisting of Block Development Officer Handwara, Assistant Executive Engineer, R&B Division Kupwara and Assistant Executive Engineer, R&B Division Ramhall. The Committee so constituted reported that the building in question is safe and it does not pose any threat to the life and property. The appellant also filed a writ petition before this Court bearing OWP No. 725/2015, seeking directions to the official respondents to proceed ahead with the dismantling process. The learned Single Judge, considering the report submitted by the Committee, which was not in tune with the decision taken by the Tehsildar, disposed of the writ petition (OWP no. 878/2015) and directed the Tehsildar to give a fresh look into the matter considering the report of the Committee.

4. Admittedly a suit for eviction and recovery of arrears of rent is pending before the learned Principal District Judge

Kupwara wherein the parties have been directed to maintain the present position as it existed on spot on 17.11.2014. During the pendency of the said civil suit the conduct of the appellant in approaching the Tehsildar and other revenue authorities by suppressing the fact of pendency of the civil suit, to find out the safety of the building in question, is not proper. Further the factual disputes are raised in the writ petition which are required to be resolved only in the pending suit. It is well settled proposition of law that if facts are in dispute the same shall not be decided in writ proceedings and parties have to agitate the factual disputes before the Civil Court/ Competent Forum by adducing evidence to establish their right. Hence the findings rendered by the Committee as well as the order passed by the Tehsildar and by the learned Single Judge of this Court shall not be relied upon by the parties in the suit. The civil Court has to independently apply its mind and, if necessary, appoint a Commission and decide the issues raised in the suit on merits. The civil Court may dispose of the suit within a period of six months from the date of receipt of copy of this order. It is made clear that the order passed by the Executive Magistrate, the report of the Committee or the

order passed by the learned Single Judge of this Court shall not be relied upon by the parties to the suit.

5. With above directions the appeal stands disposed of. No costs.

(Ali Muhammad Magrey)
Judge

(N. Paul Vasanthakumar)
Chief Justice

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