

HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR

OWP No. 1306/2015

Date of Order: 29.10.2015

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Mst. Syeda Begum (aged 65 yrs)  
W/o Habibullah Wani,  
R/o Ziyarat Batamaloo, Srinagar

.....Petitioner

versus

1. State of Jammu and Kashmir through  
Commissioner/ Secretary to Govt.  
Revenue Department, Civil Secretariat Srinagar/Jammu.
2. State Disaster Management Authority,  
Through its Chief Executive Officer,  
Civil Secretariat, Srinagar
3. State Executive Committee  
Under Disaster Management Act  
Through its Chairperson, Civil Secretariat,  
Srinagar/Jammu
4. District Disaster Management Authority, Srinagar  
Through its Chairperson Dy. Commissioner,  
Srinagar
5. Chief Executive Officer,  
(Addl. Deputy Commissioner, Srinagar)  
District Disaster Management Authority,  
Srinagar
6. Tehsildar (Central)  
Shalteng, Srinagar

.....Respondents

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**Coram:**

**Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice**  
**Hon'ble Mr. Justice Tashi Rabstan, Judge**

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**Appearing counsel:**

For the Petitioner(s) : Mr. A. Haqani, Advocate.  
For the Respondent(s) : Mr. Tasaduq. A. Khawaja, AAG.

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**N. Paul Vasanthakumar, CJ**

1. This writ petition is filed praying for issuing writ of mandamus directing the respondents to release the sanctioned ex-gratia amount of Rs. 75,000/- and other benefits as may be released under the Disaster Management Act and Rules framed there under in the face of flood which submerged the petitioner's house at Ziyarat Batamalloo on 07.09.2014 by quashing the order dated 15.06.2015, recommending to reject the claim of the petitioner on the ground that petitioner's house remained locked from prior to 1998 till date.
2. It is the specific case of the petitioner that she is permanent resident of J&K State and she is the owner and in actual physical possession of the house bearing No. 128/3 Book No. 1083475, Ziyarat Batamalloo Srinagar which got fully damaged on 07.09.2014 due to unprecedented floods. The house was submerged for over a period of two weeks. The said fact was verified by the SHO Police Station Batamalloo and certificate bearing No. 112/FDR/2014 was issued on 19.10.2014. The house was also inspected by the Assistant Executive Engineer, Right City Sub Division, Srinagar along with his team. It was reported after inspection that the ground floor of the

residential house of the petitioner had submerged and the load bearing interior walls and partition walls had developed multiple vertical cracks. The first floor of the house has partly cracked. The said certificate was issued by the Executive Engineer, R&B Construction Division-II, Srinagar on 01.11.2014 declaring that the petitioner's house is not safe for human habitation. It is the contention of the petitioner that based on the said assessment made by the officers of the Government, a sum of Rs. 75000/- was approved to be disbursed to the petitioner at the first instance on, which was recommended to be cancelled by order dated 15.06.2015 on the ground that petitioner was not residing in the said house.

3. The contention of the petitioner is that the compensation payable is for the damage caused to the house/houses and admittedly the house of the petitioner was fully damaged which was also certified by the authorities of the Government, hence the ground that petitioner's house was not occupied by the petitioner at the relevant time, is not correct. Even assuming it to be true, the said reason cannot be a valid reason to deny the compensation as the house was fully damaged.

4. The respondents have filed the reply affidavit stating that recommendation to cancel the sanctioned amount was made only on the basis that the building in question was non-residential and the petitioner having not resided in the said house which was affected due to floods, the order of cancellation of relief is valid.
5. Reply affidavit was also filed by the petitioner stating that she was actually residing in the said house and for proving the same she is having the Ration card issued under Book No. 1083475 for the year 2012-13 in the name of the petitioner's husband (since deceased) under House No.128/3 for two members of the family by the Consumer Affairs and Public Distribution Department of the State Government and the recommendations for cancelling the relief was made on imaginary reason that the petitioner was not residing in the said house, without conducting local enquiry.
6. We have heard Mr. A. Haqani, learned counsel for the petitioner as well as Mr. Tasaduq H. Khawaja, learned AAG.
7. The point arises for consideration in this writ petition is as to whether the petitioner is entitled to get the ex-gratia

relief of Rs. 75000/- due to the damage caused to her house because of floods which was already sanctioned.

8. It is an admitted fact that the petitioner is the owner of the said house and the house was fully damaged as certificate to that effect was issued by the Executive Engineer, R&B Construction Division-II, Srinagar on 01.11.2014 stating that on examination of the structure it is not safe for any habitation as there are multiple vertical cracks on load bearing walls interior walls and partition walls besides floor sunk and the first floor had partly cracked.. It is also an admitted fact that as per the flood relief scheme the fully damaged houses are to be paid Rs. 75000/- as relief by the Government as under the Scheme it is mentioned that for the damage of house/houses a sum of Rs. 75000/- is payable to the owner. It is not mentioned in the scheme that person concerned should be residing in the house. In the absence of any such prescription in the scheme, even assuming that the petitioner was not residing in the said house for any reason, the respondents are not justified in not paying the relief of Rs. 75000/- for the fully damaged house of the petitioner. The narrow interpretation attempted to be given by the respondents cannot be

accepted as the scheme is framed intending to give the benefit to the persons who suffered damage to their houses due to unprecedented floods. Nowhere in the scheme it is stated that the person should be actually residing in the house when the flood hit the house. Further it is the clear case of the petitioner that she was residing in the said house and to prove the same she has produced the Ration card issued by the Consumer Affairs and Public Distribution Department which is a primary evidence/official document to prove the residence of the petitioner. In such circumstances the recommendation made by Tehsildar dated 15.06.2015 is contrary to the facts and the same is liable to be set aside.

9. Consequently the order dated 15.06.2015 is set aside with a direction to the 4<sup>th</sup> respondent to release the sanctioned amount of Rs. 75,000/- in favour of the petitioner within a period of two weeks from the date of receipt of copy of this order .
10. No costs.

**(Tashi Rabstan)**  
**Judge**

**(N. Paul Vasanthakumar)**  
**Chief Justice**

**SRINAGAR**  
**29.10.2015**  
**Anil Raina, Secy**