

**HIGH COURT OF JAMMU AND KASHMIR
SRINAGAR**

OWP No. 987/2015

Date of order: April 28, 2016

Ghulam Mohd Changa & Anr.

Vs.

State of J&K and Ors.

Coram:

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

<i>Whether to be reported:</i>	<i>Yes</i>
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Appearing counsel:

For the petitioner(s) : Mr. M. A. Qayoom, Adv.

For the respondent(s) : Mr. S. T. Hussain, Adv.

(Oral)

The parties have yet again locked horns in this writ petition in respect of claim over the possession of shop situated at Pahalgam. Earlier this Court vide its Judgment dated 14th August, 2014, passed in OWP No. 1529/2013, in which, the parties were same and the subject matter of the property was also same, quashed the order passed by District Magistrate and he was directed to reconsider the whole issue in accordance with law. The District Magistrate was directed to pass appropriate orders after affording opportunity of hearing to the parties and was directed to entertain any document/material which they may produce.

The District Magistrate has passed the order dated 2nd June, 2015. It is this order which is called in question in this writ petition by the petitioner on the principal ground that the documents which were produced before the District Magistrate for considering the claim of the petitioner in respect of the possession of shop in question were not at all considered by the said authority. It is for this reason, prayer is made that this order be quashed.

Mr. S. T. Hussain, learned counsel appearing for the private respondents raised objection about the maintainability of the writ petition on the principal ground that in terms of

Jammu & Kashmir, Migrants Immovable Property (Protection, Preservation and Restraint on Distress Sales) Act of 1997 (for short Act of 1997), their being provision of filing appeal against the order of District Magistrate which being an efficacious alternative remedy, the writ petition will not be maintainable. Learned counsel made elaborate submissions and referred to the Judgment of the Hon'ble the Supreme Court to indicate that in which manner and in which circumstances writ Court can exercise its jurisdiction. Learned counsel submitted that in the facts and circumstances of this case it would be appropriate for this Court not to exercise the writ jurisdiction. Learned counsel extensively read relevant Para's of the Judgments reported as (2015) 5 SC cases 423, (2015) 6 SC cases 773, AIR 1994 Kerala 304 and (2011) 4 SC cases 240. Learned counsel submitted that the order passed by the District Magistrate is within his jurisdiction, thus, the writ petition challenging the said order is not maintainable.

Learned counsel also referred to the documents about which, claim is made by the petitioner in the writ petition that they were not considered by District Magistrate and also argued by the learned counsel at the time of hearing that these documents were not considered by the District Magistrate, being inadmissible in evidence, as such, the District Magistrate was not under obligation to look into these documents. Learned counsel submitted that this writ petition is not maintainable and be dismissed.

The Jammu & Kashmir, Migrants Immovable Property (Protection, Preservation and Restraint on Distress Sales) Act of 1997 (for short Act of 1997) is a temporary legislation. This legislature has been brought into existence to protect the rights of that section of population who suffered migration, qua their immovable properties as also interest in respect of these properties. The District Magistrate is defined as

competent authority in terms of Section 2(b) of the said Act, and in terms of Clause 2(d) the expression “immovable property” is defined which include tenancy rights or interest created under law for the time being in force.

Any order passed by the District Magistrate can be challenged in an appeal under Section 7 of the Act of 1997 before the Financial Commissioner.

When order is passed by statutory authority, then in accordance with the mandate contained in the particular Act, same can be challenged in an appeal or revision and in the manner prescribed in the statute.

The writ Courts normally do not entertain writ petitions against the orders passed by the statutory authorities when there is efficacious alternative remedy of filing of appeal and for revision provided by statute against such orders.

However, in view of the principles enumerated by Hon'ble the Supreme Court in the Judgments, few of which have been referred to today before this Court by learned counsel for the respondent, a writ petition even in such circumstances can be entertained if the order passed by the authorities is without jurisdiction or that the statutory authority has not acted in accordance with the provision of the enactment in question or has acted in defiance of the fundamental principles of judicial procedure, or invoked the provisions which are repealed or when an order has been passed in total violation of principles of natural justice.

In order to ascertain whether the case of the petitioner falls within any of the aforesaid principles enumerated by Hon'ble the Supreme Court, the case of the petitioner and the submissions made by their learned counsel would require to be considered.

Learned counsel for the petitioner has placed on record some documents which includes receipts, which have been

issued by original owner in respect of rent of 2 Kanals land from the petitioner. The perusal of the impugned order would show that none of these documents have been considered.

In order to verify the claim of the petitioners that despite these documents being available on the record of the District Magistrate he has not considered the same, the respondents were directed to produce the record. Perusal of the record would show that the petitioners had submitted as many as ten documents before the District Magistrate. These ten documents are part of record. Admittedly, the District Magistrate has not considered these documents, as such, he has not evaluated their value and their impact on the claim of the petitioners. The submission of learned counsel for the respondents that these documents are inadmissible evidence, cannot be considered at this stage by this Court, inasmuch as, the District Magistrate was within his rights to return findings about the admissibility or otherwise of the documents produced before him. Since the District Magistrate has not considered the documents at all, the objections raised about their admissibility in these proceedings will not be considered by this Court at this stage.

Since the District Magistrate has completely overlooked to the documents of petitioners and has not considered them, he on the one hand has violated the principles of natural justice and on the other hand has defied the fundamental principles of judicial procedure.

In view of the aforesaid fact situation, it is held that this writ petition is maintainable and in view of the discussion made herein above same is bound to succeed.

For the above stated reasons this writ petition is disposed of in the following manner:

By issuance of writ of certiorari the order dated 2nd June, 2015, passed by respondent-District Magistrate is quashed. Respondent-District Magistrate is directed to

reconsider the whole issue in the light of the observations made in this Judgment and in the Judgment dated 14th August, 2014 passed in OWP No. 1529/2013. Respondent-District Magistrate to pass fresh orders preferably within four weeks from the date copy of this order is served. The said authority in the meanwhile is directed to get the inventory of the articles which are lying in the shop prepared by Tehsildar Pahalgam in presence of parties.

The record is returned back to Mr. N. H. Shah, learned AAG in the open Court.

(Muzaffar Hussain Attar)
Judge

SRINAGAR
28/04/2016
Sakeena