

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

MP No.06/2017 in WPPIL No.292/2003 & connected MPs.

Date of order: 31.10.2017

Sunil Koul V. State of J&amp;K and ors.

**Coram:**

**Hon'ble Mr Justice Alok Aradhe, Judge**  
**Hon'ble Mr Justice Tashi Rabstan, Judge**

**Appearing counsel:**

For Petitioner/appellant(s) : Mr. Harbans Lal, Advocate.  
Mr. Keshav Thakur, Advocate.  
Mr. U K Jalali, Sr. Advocate with  
Mr. R P Sharma, Advocate.

For respondent (s) : Mr. K S Johal, Sr. Advocate with  
Mr. J I Balban, Advocate.

i/	Whether to be reported in Press/Media	:	Yes/No
ii/	Whether to be reported in Digest/Journal	:	Yes/No

**MP NO.06/2017:**

Heard on MP No.06/2017, a petition for review/ recall of the orders dated 15.07.2003 and 07.08.2003. Learned counsel for the applicants/respondents submitted that by the aforesaid orders, a Division Bench of this Court had taken cognizance of this Writ Petition as Public Interest Litigation and had issued certain directions. It is further submitted that during the pendency of the writ petition, the State legislature has enacted an Act namely the J&K Protection of Interest of Depositors (In Financial Establishments ) Act, 2012 which has come into force w.e.f. 11.03.2013 and therefore, the petitioners have alternate efficacious remedy and the petitioner should be relegated to the alternate efficacious remedy in light of law laid down by the Supreme Court in the case of **Guruvayoor Devaswom Managing Committee And Others v. C K Rajan And Others, (2003) & SCC 546**. It is also submitted that the writ petition does not conform to the

requirements of the Rule 24 framed by this Court with regard to public interest litigation and therefore, the Writ petition should be relegated to the competent authority under the Act and it should be directed to proceed with the matter.

2. On the other hand, learned counsel for the petitioner has raised a preliminary objection with regard to maintainability of this petition on the ground that an application for recall of the order dated 15.07.2003 read with order dated 15.03.2010 has already been rejected by the Division bench of this Court vide order dated 04.01.2013. It is further submitted that Supreme Court by an order dated 15.07.2003 has already upheld the validity of the order dated 30.05.2003 and 15.07.2003 passed by this Court and therefore, this petition is not maintainable. It is further submitted that provisions of the Act are prospective in nature and therefore they do not have application to the fact situation of the case as the transactions in question have been taken place in the year 2002, i.e. well before prior to coming into force of the Act. In support of aforesaid submissions, learned counsel for the petitioner has referred to decision of the Supreme Court in the case of **District Collector, Vellore District v. K. Govindraj, AIR 2016 Supreme Court 526** and has submitted that the statute is prima facie prospective unless the same clearly specified that it is retrospective in nature. Mr. U K Jalali, learned senior counsel for the petitioner in WPPIL No.292/2003 has supported the submission made by learned counsel for the petitioner. It is further submitted that only two properties are left to be attached and only an amount of Rupees three crore is required to be dispatched and out of 1300 depositors, 700 depositors have been paid their amount. It is further submitted that the Act in question has no retrospective application.
3. We have considered the submissions made by learned counsel for the parties and have perused the record. In view of order dated 04.01.2013 passed by Division Bench of this Court in CMP No.12/2010, it is evident that the application for recall of the order dated 15.07.2003 read with order

dated 15.03.2010 has already been dismissed. It is also evident that the Supreme Court by an order dated 15.07.2003 passed in Special Leave to Appeal (civil) No.16018/2003 has already upheld the validity of the order dated 30.05.2003 and 15.07.2003 passed by this Court. Therefore, it is not permissible for this Court once again to examine the validity of the orders. Besides that, from a bare perusal of the provisions of the Act, it is evident that it is prospective in nature and clearly states that the aforesaid Act shall come into force w.e.f. 11.03.2013. The transactions admittedly have taken place prior to commencement of the provisions of the Act and therefore, the provisions of the Act cannot be invoked in respect of transactions which have already been taken place prior to enactment of the Act. The decision relied upon by the **Guruvayoor Devaswom Managing Committee and anothers (supra)**, has no application to the obtaining factual matrix of the case as in the aforesaid case, the Supreme Court was dealing with the affairs of the temple which is governed by the Statute and the Statute itself provides the remedy to the aggrieved person. The Supreme Court laid down the principle where the statute itself provides a remedy, the PIL should not be entertained, which is not case in hand.

4. In view of preceding analysis, we do not find any reason to entertain MP No.06/2017. In the result, the same fails and is hereby dismissed.
5. List WPPIL No.292/2003 along with connected MPs for consideration on 08.11.2017.

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

**(Alok Aradhe)**  
**Judge**

Jammu  
31.10.2017  
Raj Kumar