

**IN THE HIGH COURT OF JAMMU AND KASHMIR**  
**AT SRINAGAR**

(Through Virtual Mode)

**LPA No. 79/2021**

**Sunil Tickoo & Anr.**

...Petitioner(s)

Through: Mr. Salih Pirzada, Adv.

Vs.

**Union Territory of JK & Ors.**

...Respondent(s)

Through: Mr Usman Gani, GA

**Coram: HON'BLE THE CHIEF JUSTICE  
HON'BLE MR JUSTICE SANJAY DHAR**

**ORDER**

**30.06.2021**

1. We have heard Mr. Salih Pirzada, learned counsel for the appellants and Mr Usman Gani, learned GA for the respondents.
2. The petitioners-appellants were given show cause notice as to why they should not be evicted from the respective quarters in their possession and subsequently separate orders of eviction were passed against each one of them.
3. The aforesaid notices of eviction and the orders of eviction were challenged by them by means of a writ petition which has been dismissed by the impugned judgment and order dated 24<sup>th</sup> June 2021 on the ground that they have a right to appeal under the Jammu and Kashmir Public Premises (Eviction of Unauthorized Occupants) Act 1988, (hereinafter referred to as the Act).
4. The petitioners-appellants have assailed the above order of the learned Single Judge on the ground that the notices do not conform to the provisions of law and that their eviction is contrary to the object of settling the migrant employees.

5. It appears that the petitioners-appellants are migrant employees who have been appointed as Teachers under a Special Package for rehabilitation and return of migrants to valley. They started living in the transit camps in pre-fabricated huts with the expectation that they would be allotted accommodation in the newly constructed quarters in the migrant colony Vessu. However, to overcome the onslaught of winter, they left the transit camp and occupied the newly constructed quarters without any order of allotment. The petitioner No. 1 occupied Quarter No. G-5 of the transit camp, whereas the petitioner No. 2 occupied Quarter No. H-16 at the transit camp. Accordingly, they were served with separate show cause notices dated 8<sup>th</sup> June 2021 whereupon eviction orders were passed against them on 15<sup>th</sup> June 2021.
6. The submission of Mr. Salih Pirzada, is that Section 4 of the Act as amended provides for a notice period of seven days whereas the petitioners-appellants were given notice of only five days to reply and submit documents in support thereof. Since the time period allowed was very short, the petitioners-appellants were prevented from filing their reply. Consequently, the orders of eviction have been passed against them in violation of the principles of natural justice. Since the show cause notices were illegal and the eviction orders have been passed in violation of the principal of natural justice, the writ court ought not to have dismissed the writ petition on the ground of alternate remedy.
7. No doubt the impugned notices allowed only a period of five days from the issuance of the notice to show cause why the order of eviction should not be passed against them, but it is an admitted fact as per paragraph 2 of the writ petition that the petitioners have occupied the respective quarters without orders of allotment in an illegal manner. In such circumstances, notice of five days or higher period such as seven days contemplated under Section 4 of the Act would not have served any purpose and would have been an empty formality. It would not have changed the status of the petitioners from unauthorized occupants to that of legal occupants. Moreover, the defect of notice period is merely an irregularity which was of a curable nature as the eviction orders were passed after expiry of seven days. Even if the petitioners-appellants have replied to the notices after five days, their reply could have been

considered, but the petitioners despite receipt of notices declined to submit their explanation as admittedly they were unauthorized occupants.

8. The show cause notices so served upon the petitioners-appellants may not be amenable to appeal under the Act, but the final order of eviction passed thereof is certainly an appealable under Section 12 of the Act before the District Magistrate of the District. Since the orders of evictions have already been passed, the show cause notices lost all efficacy. The petitioners-appellants could have challenged the eviction orders by filing appeals taking all grounds even concerning the objections to the notices before the appellate authority.
9. Learned counsel for the petitioners-appellants does not dispute that against the order of eviction, an appeal can be preferred under Section 12 of the Act before the District Magistrate and that the appellate authority has the right to condone the delay if it is satisfied that the petitioners-appellants were prevented by sufficient cause from filing the appeal in time. It is also not disputed that the appellate authority has the power to stay the enforcement of the order of eviction or demolition as the case may be subject to terms and conditions as may be deemed fit.
10. In the instant case, petitioners-appellants are occupying the quarters without orders of allotment. The said quarters have been allotted to different persons namely Ms Sunita Raina & Mr Sanjay Kachroo. Since they were not allowed to obtain possession of the same as the petitioners-appellants were in unauthorized possession of the same, they filed writ petition WP (C) No. 95/2021 wherein the High Court on 1<sup>st</sup> June 2021 directed the Relief and Rehabilitation Commissioner to handover possession of the said quarters to the actual allottees.
11. In the facts and circumstances of the case, the authorities were left with no option but to proceed with the eviction of the petitioners-appellants from the quarters in their possession as the quarters stood validly allotted to some other migrant employees. The technical plea pointing out defects in the notice would not come in aid of the petitioners-appellants as prima facie there is no error or illegality in the orders of eviction. The writ court as such committed no error of law in dismissing

the writ petition of the petitioners-appellants may be on the ground of alternate remedy.

12. Accordingly, we find no merit in this appeal and the same is dismissed with liberty to the petitioners-appellants to file appeal if so advised under Section 12 of the Act against the orders of eviction taking objection to the validity of the notice also. In case, any such appeal is filed, the appellate authority would consider it in accordance with law after allowing the petitioners-appellants opportunity to lead evidence in support of their contentions as they could not file any reply or evidence in response to the show cause notice.

13. The appeal is dismissed with the above observation with no order as to costs.

**(SANJAY DHAR)**  
**JUDGE**

**(PANKAJ MITHAL)**  
**CHIEF JUSTICE**

**SRINAGAR**  
**30.06.2021**  
Altaf