

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

WP(C) No.1568/2020
CM Nos.4378, 4786, 4787, 5055 &
5056 of 2020

Reserved on : 15.12.2020
Pronounced on : 29.01.2021

Kanta Wazir

...Petitioner(s)

Through:- Mr. Vimal Roy Jad, Sr. Advocate
With Ms. Ridhi Jad, Advocate

V/s

Union of India and another

...Respondent(s)

Through:- Mr. Tahir Majid Shamsi, ASGI

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. In this petition, the petitioner is aggrieved and has challenged notice of resumption dated 21.08.2020 and notice dated 15.09.2020 issued by respondent No.2 to the petitioner with regard to the property measuring 15 kanals 2 marla and 136 $\frac{1}{8}$ sqft. falling under Survey No.16 Badami Bagh Cantonment also known as "Nalanda House".

2. With a view to appreciate the grounds of challenge urged by the petitioner to assail the impugned resumption notices, it is necessary to set out few facts relevant for the disposal of the writ petition.

3. The petitioner is wife of Late Sh. Manmohan Wazir, IPS (retired DGP J&K) and daughter-in-law of Late Sh. T.C.Wazir, who retired

as Director, Industries. The petitioner claims that the property “Nalanda House” was granted on 99 years lease by the Government of Jammu & Kashmir to one Sh. K.N.Raina, (original lessee) on 25.10.1920. A specific entry in this regard is made in the revenue papers of the Nazool Department of the State of J&K. Sh. K.N.Raina, the original lessee, in the year 1958 vide sale deed dated 30.01.1958 had sold this property to Sh. T.C.Wazir, the father-in-law of the petitioner and father of Sh. Manmohan Wazir, through his power of attorney holder Sh. Radha Krishan Koul. The petitioner has placed on record a copy of the power of attorney executed by Sh. K.N.Raina in favour of Pt. Radha Krishan Koul on 10.01.1958 and copy of the sale deed executed by Sh. K.N.Raina in favour of Sh. T.C.Wazir on 30.01.1958. It is submitted that this transfer of subject property from K.N.Raina to the father-in-law of the petitioner had the sanction of the respondents granted vide letter No.11203-L/LNC/60/3627/L/D(C&L) Govt. of India, Ministry of Defence, New Delhi dated 05.07.1962. It is stated that the petitioner’s father-in-law by virtue of aforesaid transfer stepped into the shoes of the original lessee and became tenant under the respondents in relation to the aforesaid property. After the expiry of Sh. T.C.Wazir, the lease hold rights qua the property were inherited by Sh. Manmohan Wazir exclusively in view of the decree dated 18.10.1979 passed by the Court of learned Sub-Judge (Chief Judicial Magistrate), Srinagar in a suit for declaration titled Manmohan Wazir v. Smt. Chander Mohani Wazir. The petitioner claims that after inheriting the property, the husband of the petitioner made extensive renovations in the property by spending a huge amount of money. During his life time, the

petitioner's husband complied with all the obligations towards the property, which included the payments towards property tax, water and electricity etc.

4. The petitioner and her family had to leave the State in the year 1990 on account of militancy and worsened law and order situation in the valley. The husband of the petitioner, namely, Manmohan Wazir expired on 04.02.2018 and the petitioner with a view to secure the property and to avoid any technical objection by the respondents formally applied for renewal of the lease vide her letter dated 23.10.2019 addressed to the then Lt. Gen. Kanwal Jeet Singh Dhillon. It is the grievance of the petitioner that instead of attending to her request for renewal of lease, the respondents issued resumption notice for taking over the property. It is the complaint of the petitioner that the resumption notice dated 21.08.2020 was never served upon the petitioner and the petitioner came to know about the resumption notice dated 21.08.2020 issued by the respondents only when a copy of the caveat filed by the respondents in the High Court was served upon her. It is in the backdrop of aforesaid facts, projected by the petitioner in the petition, instant writ petition has been filed.

5. On being put on notice, the respondents have filed their reply affidavit in which it is stated that as per record viz. GLR being maintained under Rule 10 of the Cantonment Land Administration Rules, 1937 ["CLAR 1937"], land measuring 2.64 acres comprising of GLR Survey No.16 classified as B-3 is under the management of Defence Estate Officer, Srinagar. The subject land was originally held by Pt. K.N.Raina on Wasidari lease for a period of 40 years w.e.f. 25.10.1920. The sanction for

transfer of lease hold rights qua the subject property in favour of Sh.T.C.Wazir was granted by Govt. of India, Ministry of Defence vide letter dated 05.07.1962 and thereafter the original lease, which expired on 24.10.1960, was renewed under Schedule-IX of CLAR, 1937 for a period of nine years w.e.f. 24.10.1960 on payment of annual rent of Rs.68.07. This renewal was accorded by respondent No.1 vide letter No.18/30/L/L&C/62/1320/D(Land) Dated 18.02.1969. It is the categoric stand of the respondents that after 23.10.1969 there is no further renewal of lease granted by the respondents and thereafter occupation of the petitioner of the subject property has become unauthorized and illegal. It is also brought on record by the respondents that the subject land, which was khalsa land situated within the Badami Bagh Cantonment along with other similar lands came to be transferred to the control of Military Department by his Highness Maharaja Bahadur vide Command Order No.273 dated 22.09.1939. In terms of agreement dated 14.01.1956 executed between the President of India and the State of J&K, all properties held by the Military Department of the State were transferred to Defence. It is stated by the respondents that sanction for resumption of the subject property held by the successor-in-interest of the lessee T.C.Wazir was granted by respondent No.1 on 05.11.1979 followed by another letter dated 02.08.1984. While the resumption of the properties held by the Wasidars in the cantonment area was underway, the then Government of Jammu & Kashmir requested for transfer of Wasidari properties situated within the limit of Badami Bagh Cantonment to the State. It was after lots of correspondents between the two authorities, the Government of India turned down the proposal of the

State. The resumption of the properties, however, could not be undertaken in view of the decision taken by the Government of India to maintain status quo on resumption and renewal of Wasidar properties till the situation normalized in the valley. Copy of the Ministry of Defence letter dated 19.02.1997 is appended by the respondents with the reply affidavit as Annexure-R-5.

6. The respondents submit that recently Government of India, Ministry of Defence, took a decision to resume the subject property for government purposes and accordingly, issued the impugned resumption notice on 21.08.2020 to the petitioner and all legal heirs of late Sh. Tara Chand Wazir. The said notice of resumption dated 21.08.2020 was then forwarded to the petitioner vide office letter dated 15.09.2020 by registered post and the delivery whereof stands confirmed by online status of Indian Post on 22.09.2020. The respondents also claimed to have pasted one copy of the notice dated 15.09.2020 on the gate of the property in presence of two witnesses. It is, thus, denied that the subject property has been resumed by the respondents without intimation to the petitioner.

7. Heard learned counsel for the parties and perused the record.

8. At the outset, few facts that are not disputed deserve to be noticed. The subject property was a khalsa land under the control of the Department of Nazool of the State of J&K administered by the then Ruler. It was on 25.10.1920, a Wasidari (lease) was granted in favour of one Pt. Kanwar Narian Raina (K.N.Raina) for residential purposes. In the documents that have been placed on record by the parties, it is, however, not clear as to what was the tenure of the lease granted in favour of Pt.

K.N.Raina. The petitioner claims that it was a 99 years lease, whereas it is the stand of the respondents that the lease granted in favour of K.N.Raina was only for 40 years and the same is so recorded in the GLR. Pt. K.N.Raina, the original lessee, however, transferred his rights in the property in favour of Sh. T.C.Wazir through his power of attorney, Pt. Radha Krishan Koul vide sale deed dated 30.01.1958. Sh. T.C.Wazir, thus, stepped into the shoes of Sh. K.N.Raina and became Wasidar of the subject property. In the meanwhile, the property, which was situated in Badami Bagh Cantonment area came to be vested in the Military Department by his Highness Maharaja Bahadur vide Command Order No.AD-295 dated 21.09.1939. It may be noted that by virtue of aforesaid command order, all khalsa lands situated within Badami Bagh Cantonment area, which were then under the control of Revenue Department of the State, were transferred to the control of the Military Department. Later on, in pursuance of an agreement entered into between the President of India and the State of Jammu & Kashmir on 14.01.1956, all properties and assets pertaining to the J&K State Forces, as these stood on 01.09.1949 came to be transferred and vested in the Union of India. This is how in the year 1956, the subject property along with other khalsa lands falling in Badami Bagh Cantonment area came to be vested in the Union of India, Ministry of Defence.

9. As is the stand of the respondents, the original lease granted in favour of Sh. K.N.Raina was only for a period of 40 years, as such, the same expired on 24.10.1960. The respondents while approving the transfer of lease hold rights from Sh. K.N.Raina to late Sh. T.C.Wazir also

extended the lease for a period of nine years w.e.f. 24.10.1960. Going by the assertion of the respondents, the lease granted in favour of Sh. T.C.Wazir, which expired on 23.10.1969, have neither been further extended nor Sh. T.C.Wazir during his life time or Sh. Manmohan Wazir, who is claimed to have succeeded him exclusively qua the subject property, has ever applied for renewal of the lease. Nothing has been placed on record by the petitioner to show that the lease was ever extended beyond 23.10.1969.

10. The petitioner or for that matter any other legal heir of Sh. Manmohan Wazir, who is stated to have died in the year 2018, have also not applied for transfer of lease in their favour except a belated request for renewal of the lease is claimed to have been made by the petitioner on 23.10.2019. It is the precise case of the petitioner that the original lease granted in favour of Sh. K.N.Raina was for a period of 99 years and, therefore, there was no requirement to seek renewal of the lease before expiry of 99 years from the date of execution of the original lease deed. The plea of the petitioner is that resumption notice could not have been issued by the respondents without first deciding her application for renewal of the lease.

11. There is no dispute that when the lease was originally granted to Sh. K.N.Raina on 25.10.1920, the leases/allotments of the Nazool properties were regulated by the **Rules for Grant of Lands in Jammu & Kashmir Provinces for Building Purposes** promulgated by Alan No.10 dated 7th Bhadon, 1976. In terms of Rule 19 of the Rules of Grant of Lands in Jammu & Kashmir Provinces for Building Purposes, lease(s) to be

granted under the Rules were ordinarily granted for a period of 40 years. However, it was open to the Wasidar to apply for renewal of the lease. However, no renewal of lease was permissible for a period more than 20 years. For facility of reference Rule 19 of the aforesaid Rules is reproduced hereunder:-

“19. Lease under these Rules shall ordinarily be granted for a period of 40 years. It shall, however be open to the Wasidar to apply for renewal of his lease. A renewal of lease, if granted, shall be subject to the following conditions:-

- i) No renewal shall be for a period of more than 20 years.
- ii) At no renewal shall the ground rent fixed exceed 50 percent in excess of the rent for the term next preceding.”

12. In the absence of original lease deed on record, it is to be presumed that the lease granted to Mr. K.N.Raina was only for a period of 40 years, which could not have been further renewed for more than 20 years. In terms of the aforesaid Rules, which were then prevalent, lease of a khalsa land could have been granted for a maximum period of 60 years. The fact that the lease granted in favour of Sh. K.N.Raina was only for 40 years is also borne out from the record of the respondents maintained in the shape of GLR. Needless to say that the entries recorded in the GLR are presumed to be correct unless the same are disproved by contrary evidence.

13. Hon'ble Supreme Court in the case of **Union of India v. Ibrahim Uddin, (2012) 8 SCC 148**, in paragraph 83 has observed thus:

“The General Land Register and other documents maintained by Cantonment Board under the Cantonment Act and the Rules made thereunder are public documents and the certified copies of the same are admissible in evidence in view of provisions of Section 65 read with Section 74 of Evidence Act. It is settled legal position that entries made in the General Land Register maintained under Cantonment Land Administration Rules is conclusive evidence of title.”

(underline by me)

Similar view has been taken by Apex Court in **Union of India v. Kamla Verma, (2010) 13 SCC 511** and reaffirmed in **Union of India v. Robert Zomawia Street, (2014) 6 SCC 707** (see para 12).

14. Even if, this Court were to agree with Mr. Vimal Roy Jad, learned Senior Counsel appearing for the petitioner, that the original lease granted in favour of Mr. K.N.Raina was for a period of 99 years, the same stands also expired in October, 2019. Neither there is further renewal by the competent authority of the lease nor can the same be claimed by the petitioner as a matter of right. In that view of the matter, the resumption notice issued by the respondents cannot be found fault with.

15. This Court is not inclined to accept the plea of the petitioner that resumption notice was not served upon her. The proof of service has been placed on record by the respondents. There is also evidence on record to indicate that apart from sending the notice to the petitioner through registered post, which, as per the record of the postal authorities, was actually delivered to the petitioner, a copy of the resumption notice was

also pasted on the conspicuous part of the house/property in presence of two witnesses. The plea of the petitioner that she was never served with the notice of resumption is only *ipse dixit* and unsubstantiated claim of the petitioner.

16. It is also interesting to note that there is evidence of transfer of leasehold rights from the original lessee Sh. K.N.Raina to Sh. T.C.Wazir, the father-in-law of the petitioner. This transfer of lease hold rights also has the approval of the respondents, however, there is nothing on record to show transfer of lease hold rights from Sh. T.C.Wazir to Sh. Manmohan Wazir, who is claimed to have inherited the subject property exclusively in terms of the decree of the Court of Sub-Judge (CJM), Srinagar.

17. It is nowhere pleaded by the petitioner that her husband ever applied to the respondents for entering his name as Wasidar of the subject property after the death of Sh. T.C.Wazir. Otherwise also, the renewal of the lease, which expired on 24.10.1960, was only for a period of nine years and, thus, expired on 23.10.1969. Thereafter, there is no renewal of the lease, however, the property was taken possession of by husband of the petitioner and rented out to third party by way of Sub-Lease.

18. At this stage, it may be pertinent to notice that in terms of Section 11 of the Jammu & Kashmir Land Grants Act, 1960, the provisions of Transfer of Property Act, Svt. 1977 are not applicable to any grant or other transfer of land or any interest therein made before or after the promulgation of the Act. For facility of reference Section 11 of the J&K Land Grants Act is reproduced hereunder:-

“11. Transfer of Property Act, Svt. 1977 not to apply to Government grants. — Nothing contained in the Transfer of Property Act, Svt. 1977 shall apply or be deemed ever to have applied to any grant or other transfer of land or any interest therein heretofore made or hereafter to be made by or on behalf of the Government to or in favour of any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.”

19. From a perusal of Section 11, it is abundantly clear that the provisions of Transfer of Property Act are not applicable to the grants made by the Government in favour of any person of the Nazool property whether before or after coming into force of the J&K Land Grants Act, 1960 and such grant and transfer shall take effect as if the Transfer of Property Act had not been passed. Similarly, in terms of Section 12, such grants or transfer, as are referred to in Section 11, shall take effect according to their tenor. It may further be relevant to note that in terms of Section 12A of the Land Grants Act, 1960, any person holding land on lease granted under the J&K Land Grants Act or under the Rules for Allotment of Building Sites in Srinagar and Gulmarg, Svt. 1962 or under the Rules for Grant of Lands in Jammu & Kashmir Provinces for Building Purposes (Ailan No.10 dated 7th Badhoon, Samvat 1976) etc. etc., if transfers such land or any right therein is made without permission of the Government or any authority empowered in this behalf, lease of such land shall determine and shall be deemed always to have determined w.e.f. the date of such transfer. Even by operation of Section 12-A, the petitioner, who has parted with the

possession of the property by creating sub-lease in favour of Additional Commissioner, Special Bureau of Government of India, has lost her right to hold the property as per the grant/lease, if any.

20. Viewed from any angle, I find no justification in the petitioner holding the property indefinitely. Even if, the star plea of the petitioner that the original lease was for a period of 99 years is accepted, such period, too, has expired and in the absence of any extension in her lease, granted by the competent authority, she has no right to stay on the property and continue in possession directly or indirectly. The respondents were, thus, well within their right to resume the property, which was being held up by the petitioner un-authorizedly since long. The petitioner has also failed to make out a case of deemed extension of lease. Facts and circumstances of the case, as narrated above, however, point to the contrary that the subject land of which the lease expired way back in 1969 is continuously under illegal and unauthorized occupation of the petitioner through her tenants.

21. Plea of the petitioner that similar properties in the vicinity have been spared by the respondents and the petitioner alone has been chosen for differential treatment is also without any substance. First, that there is no concrete material brought on record to substantiate the plea; Second, that Article 14 which guarantees right of equality and not to be discriminated cannot be enforced in negative manner. This Court is sure that respondents would take similar steps for resumption of properties which are similarly situate with the subject property.

22. In the premise, I find no merit in this petition, the same is, accordingly, dismissed along with connected applications. The respondents

shall proceed to determine and pay due compensation for the structures legitimately raised on the subject land to the petitioner and other legal heirs of the recorded lessee according to law.

(Sanjeev Kumar)
Judge

Srinagar.
29.01.2021
Vinod.

Whether the order is speaking : Yes
Whether the order is reportable: Yes

