

HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR

CM No. 2079/2020 in
WP(C) No. 932/2020
CM No. 2080/2020

Gul Mohammad Rafiquee

.... Petitioner(s)

Through:- Mr. Salih Pirzada, Advocate

V/s

Government of J&K & ors.

.....Respondent(s)

Coram : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

ORDER

CM No. 2079/2020

Applicant seeks extension of time for annexing the requisite court fee with the writ petition.

For the reasons stated in the application same is allowed. Applicant is directed to deposit the requisite court fee with the Registry of this Court within a period of one week after the announcement of lifting of lockdown on account of COVID-19 by the Government.

Application is **disposed of**.

WP(C) No. 932/2020 & CM No. 2080/2020

01. Petitioner through this petition seeks quashing of order No. LA-580-582/E.O/2020 dated 10.06.2020 passed by respondent No. 3-Estate Officer, J&K Legislative Assembly Secretariat, Srinagar under Sub-Section (1) of Section-(5) of the Jammu & Kashmir Public Premises (Eviction of Unauthorized Occupants) Act, 1988.

02. The petitioner pursuant to the impugned order was directed to vacate Set No. 218 of the Legislators' Hostel, Srinagar within seven days after the receipt of the said order.

03. Learned counsel for the petitioner submits that an appeal against the impugned order of eviction dated 10.06.2020 was preferred and was considered by the 4th Additional District Judge, Srinagar, who vide his order dated, 17.06.2020, returned the same holding that:-

“.....Thus, this court lacks the jurisdiction to entertain and decide the instant appeal. The counsel for the appellant failed to give any response to show that this court enjoins the jurisdiction to entertain and decide the instant appeal. Hence, the appeal along with interim application is returned to Ld. Counsel to be presented before proper and appropriate³ forum. The copy of this order is sent to the Ld. Counsel for the appellant through virtual mode on his phone number 8493000298.

The appeal is as such disposed off. Office to compile the file and consign it to records.”

04. By an amendment dated 23.07.2016 to section 12 sub-section (1) of the Jammu & Kashmir Public Premises (Eviction of Unauthorized Occupants) Act, 2016, wherein following has been substituted which reads as under:-

“(5). Amendment to Section 12: in section 12 of the Principal Act, for the sub-section 1, the following sub section shall be substituted namely:

- 1) an appeal shall lie from every order of the estate officer made in respect of any public premises under Section 5 or section 7 or section 8 or section 10 to the District Magistrate of the District in which public premises are situate.”**

05. In view of the aforesaid amendment, an appeal against the order of Estate Officer, would lie before the District Magistrate, Srinagar. The petitioner, however, did not choose to file any appeal before the District

Magistrate, Srinagar, but has opted to file the present writ petition against the eviction order dated 10.06.2020.

06. An appeal is a statutory remedy and when appellate Forum is provided, writ petition is not maintainable unless the appellate Forum is approached and the remedy provided under the Statute is exhausted. As long as the District Magistrate, Srinagar is the appellate authority the petitioner has to avail the remedy irrespective of whatever grievance he has because writ petition is not the remedy unless the statutory appeal is decided.

07. However, it appears that the petitioner was given seven days time to vacate the premises as per order dated 10.06.2020, but that time has already been expired. Learned counsel for the petitioner was candid enough to admit that petitioner might have already been evicted by now but still he is pursuing the petition which has become infructuous otherwise, also it is not maintainable without exhausting the remedy provided under the statute.

08. In view of the aforesaid statement of the learned counsel for the petitioner, nothing survives in this petition for consideration before this Court as the present petition is not only maintainable but also has been rendered infructuous.

09. Dismissed as having been rendered infructuous alongwith connected CM.

(Sindhu Sharma)
Judge

SRINAGAR
22.06.2020

Ram Murti

Whether the order is speaking	:	Yes
Whether the order is reportable	:	Yes/No.