

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

**Reserved on: 22.10.2024
Pronounced on: 29.11.2024**

OWP No. 770/2004

1. **Surinder Arora, aged 50 years
S/O Sh. Nirmal Arora
R/O 208, Jogi Gate, Jammu.**
2. **Subash Chander, aged 59 years
S/O Sh. Mela Ram
R/O 676 Panjwakter Road,
Jammu.**
3. **Bushan Lal Jain aged 62 year through
Sunil Jain Attorney Holder
R/O 30 A/D Gandhi Nagar, Jammu.**
4. **Prem Sagar Jain, aged 65 years
S/O Iachman Dass Jain
R/O Jullahka Mohalla, Jammu.**
5. **Sumitri Devi, aged 61 years
D/O Amar Nath
Through Ashok Kumar Gupta
Jammu.**
6. **Dev Raj Anand, aged 64 years
S/O Mool Raj Anand
Through Raman Anand
Attorney Holder,
R/O Jammu.**
7. **Raj Kumar, aged 52 years
S/O Sh. Barkat Ram
R/O Alaf Shah Daira
Partap Garh Mohalla, सत्यमेव जयते
Jammu.**
8. **Chuni Lal, aged 50 years
S/O Sh. Shiv Ram
R/O EP-672, Kanak Mandi, Jammu.**
9. **Kashmir Singh (deceased)
(9 a) Satya Devi
Wd/O Late Sh. Kashmir Singh
(9b) Kamal Singh
S/O Late Sh. Kashmir Singh.
(9c) Darshan Singh
S/O Late Sh. Kashmir Singh
(9d) Kiran Kumari
W/O Avtar Singh
All residents of Dubb Ditta P.O Shama
Chack,
Tehsil and District Jammu.**
10. **Tej Ram, aged 65 years
S/O Sh. Chatru Ram
R/O VPO Nai Basti,
Kana Chack, Jammu.**
11. **Kasturi Lal, aged 66 years
S/O Sh. Amar Nath,
R/O Alaf Shah Diara**

- Mohalla Partap Garh,
Jammu.**
12. **Mohan Lal aged 55 years
S/O Sh. Amar Nath
R/O Alaf Shah Diara
R/O Alaf Shah Daira
Mohalla Partap Garh,
Jammu.**
13. **Darshan Kumar, aged 50 years
S/O Munshi Ram
R/O Adhara Shah Mehandi
Dharu Giran Mohalla,
Jammu.**
14. **Puran Chand, aged 52 years
S/O Sh. Jatho Ram
R/O VPO Gajansoo
Tehsil & District Jammu.**
15. **Saudagar Mal, aged 66 years
S/O Sh. Anshu Ram
R/O H. No. 218,
Baba Jeevan Shah Mohalla,
Shahidi Chowk, Jammu.**

.....Petitioner(s)

Through: Mr. Anuj Dewan Raina, Advocate

Vs

1. **State of Jammu & Kashmir
Through its Chief Secretary
J&K Govt., Civil Secretariat,
Srinagar.**
2. **Commissioner/Secretary to Govt.,
Law Department,
J&K Govt., Civil Secretariat,
Srinagar.**
3. **Commissioner/Secretary to Govt.,
Haj & Auqaf Department,
J&K Govt., Civil Secretariat,
Srinagar.**
4. **Administrator,
Auqaf Department,
Jammu**
5. **Special Officer,
Haj & Auqaf
J&K Govt,
Srinagar.**

..... Respondent(s)

Through: Mr. Ayjaz Lone, Advocate for R-4.

OWP No. 497/2008**Darshan Gupta, aged 61 years**

**S/O Late Sh. Ram Dass Gupta
R/O 556, Jaktian Mohalla Pir Mitha Jammu.**

.....Petitioner(s)

Through: Mr. Vipin Gandotra, Advocate.

Vs

1. **State of Jammu & Kashmir
Through Chief Secretary
J&K Govt., Civil Secretariat,
Jammu/Srinagar.**
2. **Commissioner/Secretary to Government,
Law Department, Jammu & Kashmir Government
Civil Secretariat,
Jammu/Srinagar.**
3. **Commissioner/Secretary to Government,
Haj & Auqaf Department, Govt. of Jammu and Kashmir
Civil Secretariat,
Jammu/Srinagar.**
4. **Administrator,
Auqaf Jammu**
5. **Sr. Superintendent of Police,
Jammu.**

..... Respondent(s)

Through: Mr. Ayjaz Lone, Advocate for R-4.

OWP No. 493/2009

1. **Tarun Dutta, aged 55 years
Through Smt. Sudesh Dutta
Wd/O Om Parkash Dutta
Allottee of Shop No. 4 at Daira Khudha Baksh,
Residency Road, Jammu.**
2. **Naved Ahmed, aged 55 years
S/o Sh. Gulzar Mohd.
Allottee of Shop No. 1 at Daira Khudha Baksh,
Residency Road, Jammu.**
3. **Noor Elahi aged 56 years
S/o Sh. Attah Mohd
Allottee of Shop No. 2 at Daira Khudha Baksh,
Residency Road, Jammu.**
4. **Mohd. Aamin aged 60 years
S/o Wazir Mohd.
Allottee of Shop No. 5 at Daira Khudha Baksh,
Residency Road, Jammu.**
5. **Nirmala Devi aged 55 years
W/O Kewal Krishan
Allottee of Shop No. 6 at Daira Khudha Baksh,
Residency Road, Jammu.**

.....Petitioner(s)

6. **Om Parkash (deceased)**
(6a) Darshna Mehra
W/o Late Sh. Om Parkash Mehra.
(6-b) Manish Mehra.
(6-c) Gunish Mehra
Both sons of Late Om Parkash Mehra
All residents of H. No. 244, Ward No. 37,
Janipur Colony, Jammu.
7. **Mehmood Ahmed aged 70 years**
S/O Raja Gulzar Mohammad
R/O 347 Mohalla Dalpatian Jammu.
Allottee of Shop No. 8 at Daira Khudha Baksh,
Residency Road, Jammu.

Through: Mr. Anuj Dewan Raina, Advocate.

Vs

1. **State of Jammu & Kashmir**
Through its Chief Secretary
J&K Govt., Civil Secretariat,
Jammu.
2. **Commissioner/Secretary to Government,**
Law Department, J&K Government, Civil Secretariat,
Jammu/Srinagar.
3. **Commissioner/Secretary to Govt., ,**
Haj & Auqaf Department, J&K Government,
Civil Secretariat,
Jammu/Srinagar.
4. **Administrator,**
Auqaf Department,
Jammu
5. **Special Officer,**
Haj & Auqaf Department, J&K Government, Jammu/Srinagar.

..... Respondent(s)

Through: Mr. Ayjaz Lone, Advocate for R-4.

OWP NO. 73/2012

Mohammed Amin, aged 65 years
S/O Wazir Mohammad
R/O Mohalla Ustad, Jammu H. No. 12
Shop No. 318 Daira Khuda Baksh, Panjbakhter Road,
Jammu.

.....Petitioner(s)

Through: Mr. Anuj Dewan Raina, Advocate

Vs

1. **State of Jammu & Kashmir
Through its Chief Secretary
J&K Govt., Civil Secretariat,
Jammu.**
2. **Commissioner/Secretary to Government,
Law Department, J&K Government,
Civil Secretariat,
Jammu.**
3. **Commissioner/Secretary to Govt., ,
Haj & Auqaf Department,
J&K Government, Civil Secretariat,
Jammu.**
4. **Administrator,
Auqaf Department,
Jammu**
5. **Special Officer,
Haj and Auqaf
Jammu and Kashmir Government
Jammu.**

..... Respondent(s)

Through: Mr. Ayjaz Lone, Advocate for R-4.

OWP No. 862/2017

**Sh. Vinay Luthra, age 42 years
S/O Late Sh. Kasturi Lal Luthra
R/O H. No. 31, Sector 1, Pamposh Colony, Janipur,
Jammu.**

.....Petitioner(s)

Through: Mr. RKS Thakur, Advocate.

Vs

1. **State of Jammu & Kashmir
Through its Chief Secretary
J&K Govt., Civil Secretariat,
Srinagar.**
2. **Commissioner-cum-Secretary,
Department of Law,
J&K Govt.,
Civil Secretariat,
Srinagar.**
3. **Commissioner cum Secretary,
Haj & Auqaf Department,
J&K Govt., Civil Secretariat,
Srinagar.**
4. **Administrator,
Auqaf Islamia, Residency Road,**

Jammu

..... Respondent(s)

Through: Mr. Ayjaz Lone, Advocate for R-4.

OWP No. 2622/2018**Smt. Kiran Bala age 56 years
D/O Late Sh. Lahori Mal
W/O Sh. Dharam Pal
R/O H. No. 40, Mohalla Jatkatian
Tehsil and District Jammu.**

.....Petitioner(s)

Through: Mr. RKS Thakur, Advocate.

Vs

1. **State of Jammu & Kashmir
Through Law Department, J&K Government,
Civil Secretariat,
Srinagar/Jammu..**
2. **Commissioner cum Secretary,
Department of Law,
J&K Government, Civil Secretariat,
Srinagar.**
3. **Commissioner cum Secretary,
Haj & Auqaf Department, J&K Government,
Civil Secretariat,
Srinagar.**
4. **Administrator,
Auqaf Islamia, Residency Road,
Jammu**
5. **Smt. Usha Rani
W/O Sh. Alok Nath
R/O Ward No. 5, Rajiv Colony,
Bari Brahmana, Bishnah
Tehsil and District Samba.**

..... Respondent(s)

Through: Mr. Ayjaz Lone, Advocate for R-4.

WP(C) No. 1698/2019**Sudesh Gupta, aged 80 years
W/O Lt. Sh. Shanti Saroop Gupta
R/O 86 A/D, Gandhi Nagar, Jammu.**

.....Petitioner(s)

Through: Mr. Anuj Dewan Raina, Advocate.

Vs

1. **State of Jammu & Kashmir**
Through Commissioner/Secretary to Govt.,
Department of Law, Justice and Parliamentary Affairs,
Govt. of J&K, Civil Secretariat, Jammu/Srinagar.
2. **Commissioner/Secretary to Govt.,,**
Department of Haj & Auqaf, Government of J&K,
Civil Secretariat,
Jammu/Srinagar.
3. **The Administrator,**
Auqaf Islamia,
3rd Floor, Haj House,
Rail Head Complex, Jammu.
4. **The Special Officer,**
Haj & Auqaf Islamia,
J&K Government, Srinagar.

..... Respondent(s)

Through: Mr. Ayjaz Lone, Advocate for R-3.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

सत्यमेव जयते

01. In most of the above titled cases, the petitioners have either sought quashment of Jammu & Kashmir Wakafs Act, 2001 as a whole, or Clause 'O' of Section 3 and Sections 45 and 46 of the Jammu & Kashmir Wakafs Act, 2001, whereby the respondents have been authorized to treat the persons in unauthorized occupation, merely on account of non-renewal of the lease agreements.

02. During the pendency of these petitions, with the constitutional changes in Jammu & Kashmir through the Jammu & Kashmir Reorganization Act, 2019, certain developments have taken place whereby Jammu & Kashmir Wakafs Act, 2001 has been repealed and the central law on the subject i.e., Wakaf Act, 1995 has been made applicable to the Union Territory of Jammu and Kashmir. Fifth Schedule of the Act was issued along with the aforesaid Act and as per serial No. 104 of table No. 1 of the fifth Schedule, Wakaf Act, 1995 which was a central law, was made applicable to the Union Territory of Jammu & Kashmir and correspondingly as per serial No. 152 of table No. 3 of fifth schedule, the Jammu & Kashmir Wakafs Act, 2001 was repealed.

03. The Jammu and Kashmir Reorganization Act, 2019 was made applicable on the appointed date i.e., 31st of October, 2019 and vide the Jammu & Kashmir Reorganization (Removal of Difficulties), 2019, notified vide S.O 3912 (E) of 2019 dated 30.10.2019 issued by Ministry of Home Affairs (Department of Jammu & Kashmir Affairs), in view of the extending of the Central Acts and repealing of the local acts, it was provided that the action taken under the repealed

Acts shall be saved meaning thereby that the notices issued, if any, under the repealed Jammu & Kashmir Wakafs Act, 2001 would hold ground in the cases, wherever initiated.

04. Learned counsel for the parties in view of this development of repealing of the Jammu & Kashmir Wakafs Act, 2001 are in unison that in view of the repealing of the said Act, the consideration of the matters with regard to seeking quashment of the Jammu & Kashmir Wakafs Act, 2001 as a whole or its certain provisions would be of academic interest only. So far as the notices issued to the litigants either of show cause with regard to their being in unauthorized occupation or the eviction orders are concerned, the matters would, however, survive.

05. Learned counsel for the petitioners to whom the notices have been issued have submitted at the bar that such petitioners though holding the wakaf property but either their leases have expired either by efflux of time of the lease period or in view of the death of some of the lessees and that the petitioners as occupants of the wakaf property are ready to enter into lease agreements with the respondent-Wakaf Board and also are ready to accept the revision in rates of

rents subject to the condition that those are not arbitrarily increased.

- 06.** Learned counsel for the respondent-Administrator Wakaf Board submits at the bar that the respondents do not wish to throw out the petitioners from the property under their occupation and the notices have been issued to them as they had neither come forward to seek renewal of lease deeds nor were ready to accept the revision of rents as determined by a Rent Revision Committee constituted for the purpose by the Wakaf Board whose recommendations were adopted by the Wakaf Board.
- 07.** He further submits that in case the petitioners to whom the notices have been issued come forward and are ready to execute fresh lease deeds on revised rates of rents, with the respondent-Wakaf Board, their representations in this behalf shall be considered sympathetically and subject to reasonable increase in rents to be charged from them. He has, however, submitted that most of the petitioners have been holding the Wakaf property at prime and commercial locations at paltry rates of rents.
- 08.** The plea with regard to challenging the vires of the Jammu & Kashmir Wakafs Act, 2001 and its provisions in view of

the Act having been repealed has become redundant and infructuous. So far as the notices issued to some of the petitioners are concerned, the same have been issued in terms of Section 45 of the Jammu & Kashmir Wakafs Act, 2001 whereby the occupants of the wakaf property have been directed to show cause within ten days from the date of issuance of the notice against the proposed order of his eviction and to appear before the Administrator Auqaf, Jammu along with the evidence which they may intend to produce in support of their cases, if any, and on failure to produce the evidence or show cause and/or appear in person on the said date of hearing, further action as warranted under law shall follow without any further notice.

- 09.** The petitioners have challenged these show cause notices without filing replies thereto as issued by the respondent-Administrator Auqaf Islamia, Jammu which, in the considered opinion of this Court, was pre mature as every noticee has a right to explain his position with regard to possession of the property under his occupation and he could also apply for renewal of the lease in case the same has expired.

- 10.** In fact, on the basis of the submission of learned counsel for the parties, the crux of the matter is the revision of rent which has triggered the petitioners to file these petitions before this Court and the petitioners, through their counsel, have submitted that they are ready to execute lease deeds so that their occupancy of the property is regularized by way of lease, however, subject to reasonable rates of rent.
- 11.** As already noticed, the learned counsel for the respondent Auqaf Islamia has made a statement that the respondent Administrator Auqaf Islamia Jammu does not wish to evict the noticees and is ready to consider the request of the occupants of the property, even after their lease has expired, to settle the matter amicably having regard to the revision of rents.
- 12.** It has been seen that the occupants of the wakaf property have been paying paltry rents and there is no justification on their part to hold the wakaf properties under their possession, even in prime locations at such rates. The Auqaf Islamia Jammu, who is custodian of these properties, is well within its right to decide the revision of the rents payable after hearing all the occupants individually, with regard to their claims. The Jammu & Kashmir Wakaf Board

is stated to have constituted a Rent Revision Committee comprising of senior officials for the properties situated in Kashmir Division which had decided that the revision of the rents of the specified wakaf properties may be re-worked in terms of the PWD Rent Schedule and the market value of the land as notified by the local Deputy Commissioners in the case of Wakaf property situated in their districts. The same arrangement can be considered to be made by the Jammu & Kashmir Wakaf Board for its properties in Jammu division.

- 13.** Some of the petitioners have challenged the eviction orders passed by the Tehsil Committee headed by the Administrator, however, alternate and efficacious remedy is available under the Jammu & Kashmir Wakafs Act, 2001 under Section 54 providing for appeal against such orders passed by the Chairman Tehsildar Committee, which can be made to the appellate authority within thirty days of the order. The appellate authority has been defined under Section 2 of the Act as Chairperson of the State Wakaf Council, established under Section 7 of the Act, as such, the petitioners cannot maintain writ petitions in view of the alternate and efficacious statutory remedy available to them and can be relegated to the appellate authority in case they

choose so protecting them for the period they had spent in prosecuting their petitions before this Court.

14. In the aforesaid legal and factual background of all the clubbed matters, the individual petitions are taken up for disposal.

OWP Nos. 770/2014, 493/2009, 73/2012 and 1698/2019

15. The petitioners in these writ petitions have only challenged some provisions of the Act and have sought quashment of the show cause notices issued to some of the petitioners asking them to show cause as to why eviction may not be ordered against them on the expiry of the lease deed.
16. Viewed thus, these petitions being not maintainable are dismissed providing that the petitioners, who have been issued show cause notices for their eviction from the properties they are holding without any lawful authority, shall have a right to file the reply to the show cause notices which shall be considered by the respondents authority and the time spent by the petitioners before this court in prosecuting the petitions shall not be an impediment for filing of the reply to the notices.

OWP No. 497/2008

17. Through the medium of this petition, the petitioner has sought quashment of the Jammu & Kashmir Wakafs Act, 2001 being ultravires the Constitution and commanding the respondents not to take or initiate any action under the Jammu & Kashmir Wakafs Act, 2001 against the petitioner, the allottee of the Auqaf property.
18. In view of repealing of the Jammu and Kashmir Wakafs Act, 2001, this petition has also been rendered infructuous and is accordingly dismissed having been rendered infructuous.

OWP Nos. 862/2017.

19. Through the medium of this petition, the petitioner has challenged the provisions of Chapter V of the J&K Wakafs Act, 2001 particularly Sections 72, 73, 74, 77 and 78 of the Act besides seeking quashment of the judgment and order dated 04.07.2010 whereby the respondent No. 4 had ordered eviction against the occupant Kundan Lal from shop No. 34 which is in his possession as tenant.
20. The petitioner cannot maintain the instant writ petition in view of the alternate and efficacious statutory remedy available to him, for filing an appeal before the Appellate Authority in case he chooses so protecting him for the period he had spent in prosecuting his petition before this Court.

21. Viewed thus, the instant petition is dismissed as not maintainable.

OWP Nos. 2622/2018.

22. Through the medium of this petition, the petitioner has challenged the provisions of Chapter V of the J&K Wakafs Act, 2001 particularly Sections 45 to 56, 62 and 73 of the Act besides seeking quashment of the judgment and order dated 22.03.2010 whereby the respondent No. 4 had directed the petitioner to vacate and hand over the possession of the House No. 40, Mohalla Jatkatian, tehsil and district Jammu.

23. The petitioner cannot maintain the instant writ petition in view of the alternate and efficacious statutory remedy available to her by filing an appeal before the Appellate Authority in case she chooses so protecting her for the period she had spent in prosecuting her petition before this Court.

24. Viewed thus, the instant petition is dismissed as not maintainable.

25. All the petitions along with connected application(s), if any, are accordingly disposed of. No order as to costs. Copies of this common judgment shall be placed across all the files.

(M A CHOWDHARY)
JUDGE

JAMMU
29.11.2024
NARESH/SECY.

Whether judgment is speaking: Yes
Whether judgment is reportable: Yes

