

**Government of Jammu & Kashmir
Housing & Urban Development Department
Civil Secretariat, Jammu/Srinagar**

Subject:- Contempt No.344/2019 in OWP No. 111/2010 titled Hilal Ahmed Shah V/S Union Territory of J&K & Another.

**Government Order No:- 53 - JK(HUD) of 2022
D a t e d:- 12 .04.2022**

Whereas, the petitioner had filed a writ petition before Hon'ble High Court and prayed therein that he was living in one house along with his brothers, however, they were maintaining separate hearths and living separately though in a common house. It was further projected by the petitioner that under discretionary quota which is 5% of total strength of Plots i.e. 25 out of 500 plots as 475 were reserved for fire sufferers under rehabilitation for Development of Model Town at Charar-i-Sharief.

Whereas, the case of the petitioner was recommended for allotment of plot in his favour under discretionary quota, however, no formal allotment order was issued in his favour but the petitioner on his own submitted a Demand Draft amounting to Rs. 50,400/-. The said Demand Draft was returned to the petitioner with a reason that one plot has already been allotted to fire victim family in the name of real brother namely Shahnaz Ahmed under the discretionary quota and separate application for allotment of plot cannot be considered within the family/household.

Whereas, aggrieved of the said action, the petitioner filed afore titled writ petition before the Hon'ble High Court Srinagar. The Hon'ble Court disposed off the petition on 10.10.2011, the operative part is reproduced as under:-

"Respondent No. 3 is directed to enquire as to whether the petitioner and his brother namely Shahnaz Ahmad to whom the plot has been allotted constituted one family. In order to arrive conclusion respondent No. 3 to seek assistance from all the authorities including Revenue Authorities. In the event it is found that the petitioner and his brother Shahnaz Ahmad constituted one family then he will not be entitled to the allotment of plot of land but in case it is found that they did not constitute one family though were living under one roof then

petitioner's claim for allotment of plot is to be considered in accordance with the Government orders. The respondent No. 3 to initiate the process and complete the same preferably within a period of 8 weeks from the date copy of this order is served."

Whereas, petitioner filed a contempt petition which came to be registered as contempt petition No. 19/2015. During the pendency of the said contempt petition, in order to ascertain the factual position the respondents constituted a committee who gave a report. Para 2 of the committee report is reproduced as under:

"Perusal of the Choola register and the spot was done. The factual position is that the father of the petitioner Hilal Ahmad Shah had died in April 1995. He left behind widow and five sons and one daughter. The petitioner Hilal Ahmad Shah was his elder son and was married in the year 1991 and was not living jointly, but separately in the same parental house in which his brothers were living. The Choola registry shows that the petitioners entry in the Choola Registry is existing since 1992-93 till date. "

Whereas, the above said report was placed before the Hon'ble Court for its consideration and accordingly disposed of the contempt petition directing respondent No. 2 (Project Manager Charari Shareef) to process the case of the petitioner in terms of court judgment and in light of the committee report for allotment of plot.

Whereas, the matter was referred to the Administrative Department by District Development Commissioner, Budgam and Project Officer Charar-i-Sharief for consideration in pursuance to Hon'ble Court directions.

Whereas, after examining the matter, it was found that vide Govt. Order No. 192-HUD of 1991 dated 12.09.1991, 5% of plots/flats available in each housing colony developed by the Government agencies could be disposed of under discretionary quota of the Government. Further, the plots in the aforesaid colony, under discretionary quota, were reserved for the fire victims. Against one house damaged in the fire, only one plot was allotted to the fire victims out of the discretionary quota, as a policy decision and there is not a single case where against one house damaged in fire, more than one plots has been allotted under discretionary and all such similar cases have been rejected by the Authority.

Whereas, subsequently in view of the directions of the Hon'ble Supreme Court in case titled Harsh Dhingra V/s State of Haryana AIR 2001,

SC 3795 upheld the judgment of full bench of Punjab and Haryana High Court in case of Anil Sabarwal V/s State of Haryana 1997 (2) PLR 7 has set aside discretionary quota allotment of plots, on the principle that discretionary quota is violation of Article 14 of the constitution and further observed that even for distribution of State largesse the principle of fairness, which is antithesis of arbitrariness is required to be followed. Therefore, it is not permissible for any authority to carve out a discretionary quota of plots and distribute the same as its whim and fancy, because it would be totally negating Article 14 of the Constitution.

Whereas, this department vide letter No. HUD-04/2017/SDA dated 29.11.2017 have directed the Vice Chairman, JDA, SDA, Managing Director J&K Housing Board to implement the direction of Hon'ble Supreme Court and advised not to entertain any application for allotment of plot under discretionary quota, besides this the real brother of petitioner family had been already allotted one plot under discretionary quota. As such petitioner cannot claim the discretionary quota pursuant to Hon'ble Supreme Court judgment.

Whereas, the Hon'ble High Court in OWP 06/1999 titled Rakesh Kapoor and another V/s State through Secretary J&K HUDD and others have filed the writ petition challenged the discretionary quota provided to the private respondents. The Hon'ble Court disposed of the petition with directions / observations as under:-

"It is not in dispute that the allotments that have been made in favour of private respondents was not done through the process of public notice. This has been done by resorting to the quota, known as Discretionary Quota of the Minister-in-Charge.

This aspect of the matter has been adversely commented upon by the supreme court of India in the case of Common Cause, A regd. Society Vs. Union of India and others, reported as (1996) 6 Supreme Court cases 593. It has been observed that the State property, if it is to be disposed of should be disposed of by giving opportunities to all concerned. This is not happened in this case. However, taking all the facts and circumstances of the case into consideration, the allotment made are not being disturbed. A directions is given to the respondents to make available allotment of plots to the petitioners in one of the developing colonies. This aspect of the matter would be considered and decision in this behalf taken within three

months from the date copy of the order passed by this Court is made available by the petitioner to respondent authority.

In case the claim of petitioners are not considered within the above said period, the respondents would take steps with a view to implement Judgment/notified above. They would initiate proceedings against the allottees and follow the law laid down by the Supreme Court in the case of common cause. A regd. Society vs. Union of India and ors reported as (1996) 6 Supreme Court 593 and the requisite steps with a view to cancel the allotments made will be taken in law in terms of Judgment of the Supreme Court of India.”

Whereas, LPAOW No. 213/2001 had been filed by the Housing Board against the above said order of the Single Judge, which was disposed of on 20.11.2013 with observation as under;-

“As a sequel to the above discussions this appeal fails and the same is dismissed. For filing an appeal for defending an action which is patently against Article 14 of the Constitution and the Judgment of Hon’ble Supreme Court, was saddle the appellants with costs of Rs. 10,000/- to be deposited with the Secretary, High Court Legal Services Authority, Jammu within two weeks.”

Therefore, in view of the facts stated herein above, coupled with the Judgment of the Hon’ble Supreme Court as well as Division bench of Hon’ble High Court Jammu, the claim of petitioner for allotment of plot under discretionary quota is found devoid of merit, hence rejected.

By the Order of Government of Jammu and Kashmir

Sd/-
(Dheeraj Gupta) IAS
Principal Secretary to Government
Housing & Urban Development Department

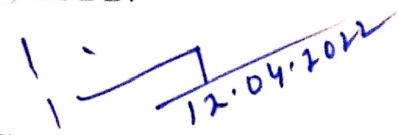
No:- HUD-Lit0MISC/135/2021-102319

Dated:- 12.04.2022

Copy to the:-

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
2. Deputy Commissioner, Budgam for information.
3. Special Secretary (Legal) for information.
4. Managing Director, J&K Housing Board for information.

5. Ms. Asifa Padroo AAG High Court, Srinagar for information.
6. Private Secretary to Chief Secretary, UT of J&K for information.
7. Private Secretary to Principal Secretary to Government, HUDD.
8. Government order File/Stock file(w.2.s.c).


(Thanna ji Bhat)

Under Secretary to Government
Housing & Urban Development Department