

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

Reserved on: 27.03.2025
Pronounced on: 03.04.2025

LPA No. 58/2025
In OWP No. 1647/2015

1. Amar Bishnah Cooperative Medical Store, BishnahAppellant(s)
through Secretary
Sham Lal Sadotra, age 58 years
S/O Lt. Sh. Rattan Chand Sadotra
R/O Ward No. 12,
Tehsil Bishnah District Jammu.
2. Sham Lal Sadotra, age 58 years
S/O Lt. Sh. Rattan Chand Sadotra
R/O Ward No. 12,
Tehsil Bishnah District Jammu.

Through: Mr. Gagan Basotra, Sr. Advocate with
Mr. Salil Gupta, Advocate.

Vs

1. Union Territory of Jammu & Kashmir
through Commissioner Secretary
Health and Medical Education
Department, Jammu.
2. Director Health Services, Jammu. जयते
3. Chief Medical Officer, Jammu.
4. Block Medical Officer, Bishnah.
5. Surinder Sharma S/O Lt. Sh. Behari
Lal Sharma R/O Village Patti,
Tehsil & District Samba.
6. Bishnah Medical Cooperative
Consumer Store, Limited Bishnah.

..... Respondent(s)

Through: Mr. Raman Sharma, AAG for R-1 to 4.
Mr. Aditya Gupta, Advocate for R-5.

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

JUDGMENT**(PER: M A CHOWDHARY-J)**

- 01.** Through the medium of this Letters Patent Appeal, judgment dated 29.01.2025 passed in OWP No. 1647/2015 titled **“Surinder Sharma Vs. State & ors”** whereby the petition was allowed by the learned Single Judge, has been challenged.
- 02.** The impugned judgment has been assailed on the grounds that the same is erroneous, perverse and contrary to the factual position and is required to be set aside; that the impugned judgment has been passed without hearing the appellant, who was respondent No. 6 in the writ petition as Mr. Ashok Basotra, Advocate, who appeared on his behalf, could not have appeared as he had never been authorized by him and the appellant had no knowledge about the pendency of the writ petition; that the impugned judgment has been passed on the basis of the judgment dated 26.07.2022 given by the writ court in the case titled **“Kathua Cooperative Marketing Society Ltd., Kathua Vs. State & Ors”** (OWP No. 969/2013), however, the said judgment was not applicable in the present facts and circumstances of the case, as the same was distinguishable on facts as the petitioner, in that case, was never allotted a shop in the

premises of the District Hospital, Kathua in accordance with any government order nor there was any allotment by any competent authority and the land was only earmarked for the said petitioner, who constructed the shop, out of his own funds and was paying monthly rent for the use and occupation of the said shop whereas, in the present case, the shop in question had been duly allotted to the appellant vide Government Order No. 118-HME of 1997 dated 05.02.1997 and the legal status of the appellant was squarely covered by the Government Order No. 492-HME of 2008 dated 17.06.2008; that the appellant was entitled as per the aforesaid Government Order No. 492-HME of 2008 dated 17.06.2008 to be considered for extension of another two years on payment of premium equivalent to 50% of the market price to be determined by the Standing Committee with 30% increase in rent within 30 days of issuance of Letter of Intent, which was not provided to the appellant; that otherwise there had been no loss to the public exchequer as the appellant had paid regular rent till 31.01.2025 to the respondent No. 4, in accordance with the market rate, which was revised after every two years in accordance with the Government Order and that there was no equitable consideration in passing the impugned order as the case of the appellant was squarely covered

by the Government Order No. 492-HME of 2008 dated 17.06.2008.

03. Mr. Gagan Basotra, learned senior counsel assisted by Mr. Salil Gupta, Advocate appearing for the appellant, in line with the grounds taken in the appeal has vehemently argued that the appellant had been running the fair price shop in the premises of Sub District Hospital, Bishnah since 13.02.1997 and the agreement having been renewed from time to time raising the rent as well, therefore, the appellant had satisfied all the conditions of the Government Orders issued from time to time more so, Government Order No. 492-HME of 2008 dated 17.06.2008.

04. The contention of the learned counsel for the appellant mainly is that as per the aforesaid Government Order of 2008, those who have got allotment without auction as is the case of the appellant, can be considered for extension for another two years, on payment of premium equivalent to 50% of the market price, to be determined by the Standing Committee, with 30% increase in rent within thirty days of issuance of Letter of Intent; that the extension shall be subject to the condition that the allottee shall give bank guarantee equal to the amount of premium for six years and undertaking on stamp papers

to vacate the premises after the expiry of the extended period of allotment.

05. He has further argued that the appellant offers for being considered for extension of another two years on payment of the revised premium and the increase of rent as per the aforesaid Government Order, which has been denied to the appellant in view of the impugned judgment and hence prayed that the impugned judgment be set aside, directing the respondents to consider the appellant in accordance with the aforesaid Government order for extension of two years subject to the conditions specified in the applicable Government Order.

06. Learned counsel for the respondents, on the other hand, vehemently opposed the contentions raised by the learned senior counsel on behalf of the appellant, on the ground that the appellant had been allotted a fair price shop in Sub District Hospital, Bishnah way back in 1997 without any auction and the appellant still wants to continue with the same arrangement even after a period of 28 years. They have argued that the public property cannot be allowed to be plundered and it is the Govt. policy to go for auction of such properties, so as to earn the maximum revenue and the plea raised by the appellant primarily to be considered for another two

years is not justifiable in any manner and prayed that the appeal be dismissed and the impugned order be upheld as the same does not suffer from any illegality.

- 07.** This is an admitted fact that the appellant, as per his own admission, had been allotted the shop in 1997 without any auction and by entering into an agreement, which was later on revised and at one stage by Rogi Kalyan Committee headed by local MLA, the allotment was extended. It appears that the appellant had been managing the allotment of the fair price shop, which is a Govt. property in connivance with the local Block Medical Officers and also the local legislator, who is heading the Rogi Kalayan Committee, for his own designs.
- 08.** The respondents, in terms of Govt. Order No. 118-HME of 1997 dated 05.02.1997, had opened fair price shops in the premises of Sub District Hospital, Bishnah as per the terms and conditions specified in the annexures to the Govt. Order and the appellant was given fair price shop by way of an agreement on 13.02.1997 and thereafter on some occasions, the rents were stated to have been increased as per the terms and conditions.
- 09.** It appears that the respondents have remained oblivious to the Govt. Order No. 492-HME of 2008 dated 17.06.2008, which clearly provided for the procedure to

be followed for allotment of structures/sites in the hospitals including fair price medical shops, providing that all the allotments shall be made through auction by inviting sealed bids from general public through advertisement in leading newspapers. Standing committees shall be constituted to fix the minimum reserve price for the site/structure to be allotted on licence with many other conditions.

- 10.** It is not understandable as to why the official respondents have not resorted to the compliance of Govt. Order No. 492-HME of 2008 dated 17.06.2008 for such a pretty long time. The contention of the learned senior counsel for the appellant that the appellant is entitled to be considered for extension of two years, pales into insignificance, in view of the fact that the appellant is already holding property in question, for almost more than two and a half decades.
- 11.** Having given our thoughtful consideration to the grounds raised in the memorandum of appeal, rival submissions urged at the bar and the record made available, we are of the considered opinion that the impugned judgment does not suffer from any illegality, so as to warrant any kind of intervention from this Bench.

12. Viewed thus, the impugned judgment is thus, upheld.
Resultantly, the appeal fails and is accordingly
dismissed.

(M A CHOWDHARY)
JUDGE

(TASHI RABSTAN)
CHIEF JUSTICE

JAMMU
03.04.2025
Naresh/Secy.

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

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