

UNION TERRITORY OF JAMMU AND KASHMIR
OFFICE OF THE DIVISIONAL COMMISSIONER, KASHMIR

Prescribed Authority under Section (3) of J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997.

(Phone/ Fax: (0194) -2487777, 2477775, 2452558, 2455357 Email address: divcomk@gmail.com)

Subject: - WP(C) No.1964/2021 titled Moti Lal Nehru V/s UT of Jammu and Kashmir and Ors—Application of Shri Triloki Nath Wali S/o Shri Hari Prasad Wali R/o Dukani Sangeen, Fateh Kadal, Srinagar A/P Migrant at Jammu for permission to alienate migrant immovable property in accordance with the provisions of J&K Migrant Immovable Property (Preservation, Protection & Restraint on Distress Sales), Act, 1997.

Reference: - Hon'ble High Court Order dated 30.09.2021 read with Order dated 04.11.2023 passed in WP(C) No.1964/2021 titled Moti Lal Nehru V/s UT of Jammu and Kashmir and Ors

ORDER NO: 129 DIVK OF 2023

DATED : 18 - 12 - 2023

Whereas, the petitioner namely Moti Lal Nehru S/o Late Bishamber Nath Nehru R/o Srinagar, attorney holder of Shri Triloki Nath Wali, had filed a writ petition before the Hon'ble Court of Jammu and Kashmir and Ladakh at Srinagar seeking inter-alia following reliefs: -

- Writ of mandamus, commanding the respondent-2 to perform his statutory legal duty strictly in terms of Section 3 of the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection & Restraint on Distress Sales) Act, 1997 and or;
- Writ of mandamus, commanding respondents to issue permission for alienation of property (two storeyed concrete house with tin roof along with 01 kanal 01 marla of land falling under Khasra No.139 situated at Baghat-i-Barzulla (Gulzar Enclave) Srinagar;
- Respondents be directed to treat that the permission to alienate the property as described as herein above, as deemed permission in view of Section 3 of the Migrant Act, 1997 and issue formal orders in this behalf.

Whereas, the Hon'ble High Court had disposed off the petition vide its Order dated 30.09.2021 with the following directions:

"...Be that as it may, having regard to the nature of relief prayed for & the submissions made at bar, this petition is disposed off by directing the respondent No. 2—Divisional Commissioner Kashmir, to take the proceedings initiated by him on the application of the petitioner for grant of permission to sell the migrant property to its logical end within a period of six weeks from the date copy of this order along with the copy of the paper book is served upon him."

Whereas, feeling aggrieved by the alleged inaction of the respondents, the petitioner has also filed Contempt Petition bearing CCP(S) No. 398/2022 seeking initiation of contempt proceedings and the Hon'ble Court was pleased to grant last and final opportunity of four weeks to comply with the aforesaid judgment;

Whereas, on examination of the case as per the available records it reveals that the alienor executed Irrevocable General Power of Attorney 23rd of October, 1997, which was attested by Sub-Registrar, Jammu on the same day/date, whereby he nominated and appointed Shri Moti Lal Nehru S/o Pt. Bishember Nath Nehru R/o Gagribal, Srinagar as his true, sincere and lawful attorney;

Whereas, on the same day i.e. 23rd of October, 1997 the alienor executed instrument of Agreement to Sell in favour of Hira Lal Dhar S/o Sh. Shy Dhar R/o Sanat Nagar, Srinagar which has been duly notarized at Jammu;

Whereas, after a gap of considerable time of 16 years, the alienor in year 2013 submitted the Prescribed Application Form (Form-1) for grant of alienation permission;

Whereas, the Prescribed Application Form (Form-1) submitted by the alienor was incomplete i.e. it was without Affidavit from the alienor and NOC from Deputy Commissioner/District Magistrate, as is mandated under Rule 3(a) and (b) of the Migrant Rules, reproduced below,

3. Application for grant of permission to alienate property: An application for grant of permission by a migrant to alienate immovable property under sub-clause (a) of section-8 of the Act shall be submitted to Prescribed Authority in Form-I accompanied by the following documents: -

- (a) An affidavit disclosing thereunder that the property is exclusively owned by him/her and/or any other co-sharer (his/her name and full particulars shall be given);
- (b) Details of such property from the Deputy Commissioner/District Magistrate concerned along with a "No-Objection Certificate".

as such, as per the established procedure, the said form was forwarded by Assistant Commissioner (Central) of this office to Deputy Commissioner, Srinagar with the following remarks: -

"For verification and report under MIP Act, 1997"

Whereas, Deputy Commissioner, Srinagar vide letter No. DCS/SQ/MLA/2810/MR dated 18.06.2013 took up the matter with Tehsildar concerned with the request to submit his categoric recommendation and other requisite documents as per the circular instructions/ checklist issued by the Office of Divisional Commissioner, Kashmir. A copy of the said communication was sent to the Executive Engineer, PW(R&B) Department concerned for assessment of the structure involved;

Whereas, vide letter No. DCS/SQ/Misc/209/2810 dated 23.06.2016, Deputy Commissioner, Srinagar issued reminder to Executive Engineer, PW (R&B) concerned requesting therein to furnish the requisite information to his office;

Whereas, meanwhile the case was again listed for hearing on 10.02.2023 and Hon'ble High Court ordered as under: -

"In spite of availing last and final opportunity by virtue of 19th October, 2022, statement of fact has not been filed in conformity the Judgement dated 13th September, 2021. However, in the interest of justice another last and final opportunity of one week is granted to the respondents to comply with the aforesaid judgement."

Whereas, complying with the orders of the Hon'ble High Court, this office vide letter No. DivCom/MLA/Misc/2023/82 dated 21.02.2023 requested Deputy Commissioner, Srinagar to furnish the latest status of the case and in absence of any clear recommendation/NOC from District Magistrate, Srinagar the case was disposed of vide this office No. 16-DIVK OF 2023 dated 08.03.2023;



Whereas, compliance report/statement of facts was submitted before the Hon'ble High Court and the Hon'ble High Court vide its Order dated 04.11.2023 has observed as under: -

"...In view of what has been stated herein, the Divisional Commissioner, Kashmir is given one last chance to comply with the order of the writ Court in its letter and spirit and file compliance report by next date of hearing, failing which the Divisional Commissioner, Kashmir shall remain present before this Court and explain as to why proceedings under the Contempt of Courts Act shall not be initiated against him."

Whereas, having due regard for the Court Order, this office vide letter No. DivCom/MLA/Misc/2023/434 dated 28.11.2023 requested Deputy Commissioner Srinagar to furnish the latest status of the case;

Whereas, Deputy Commissioner/District Magistrate, Srinagar vide his office letter No. DMS/RD/2810-MR/E-4281/205 dated 15.12.2023 read with letter No. DMS/RD/2810-MR/E-4281/206 dated 16.12.2023 conveyed their **"No-Objection Certificate"**, as required under Rule-3(b) to the grant of alienation permission in the instant property;

Whereas, the alienee namely Hira Lal Dhar S/o Shyam Lal Dhar has expired on 02.02.2017 and vide Judgement dated 19.03.2018 passed by 1st Additional Munsiff (Forest), Jammu in suit titled Sandeep Dhar & Ors V/s Maharaj Krishan Pandita, declared S/Sh. (1) Sandeep Dhar S/o Hira Lal Dhar R/o H. No. 710, Camp Road Opposite Telephone Exchange, Talab Tilloo, Jammu (half) and (2) Smt. Meenakshi Koul/Dhar W/o Late Sudhir Dhar S/o Late Hira Lal Dhar, (3) Dushyant Dhar S/o Lt. Sudhir Dhar and (4) Amranta Dhar (minor) D/o Lt. Sudhir Dhar through her mother Meenakshi Koul/Dhar W/o Late Sudhir Dhar R's/o 4/125, Amba Theatre Park, Patoli Morh, Indira Vihar, Old Janipur, Jammu (half in equal shares), legal heirs of Late Hira Lal Dhar to inherit the property in question.

Now, in compliance to the Hon'ble Court Order dated 30.09.2021 read with Order dated 04.11.2023 and in pursuance of the powers vested upon me under Section 3 of the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997, sanction is hereby accorded to the alienation of land measuring 01 kanal 01 marla along with two storied house falling under Survey No. 439 situated in estate Baghat-i-Barzulla, Tehsil Chanapora/Natipora, District Srinagar BY S/Sh. Triloki Nath Wali S/o Shri Hari Prasad Wali R/o Dukani Sangeen, Fateh Kadal, Srinagar A/P Migrant at Jammu IN FAVOUR OF S/Sh. (1) Sandeep Dhar S/o Hira Lal Dhar R/o H. No. 710, Camp Road Opposite Telephone Exchange, Talab Tilloo, Jammu (half) and (2) Meenakshi Koul/Dhar W/o Late Sudhir Dhar S/o Late Hira Lal Dhar, (3) Dushyant Dhar S/o Lt. Sudhir Dhar and (4) Amranta Dhar (minor) D/o Lt. Sudhir Dhar through her mother Meenakshi Koul/Dhar W/o Late Sudhir Dhar R's/o 4/125, Amba Theatre Park, Patoli Morh, Indira Vihar, Old Janipur, Jammu (half in equal shares), subject to the following conditions: -

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a) That the applicant(s) are rightful owners/occupants of the property proposed to be alienated and is free from all encumbrances and the title of the proposed alienor(s) is certified by the Tehsildar concerned under his seal and signatures.

b) That the value of the property (land) under proposed alienation shall be calculated as per the stamp rate prevailing at the time of execution/ registering of Sale Deed applicable under **residential category** of land of **estate Baghat-i-Barzulla, Tehsil Chanapora/Natipora District Srinagar** as approved by the Committee constituted under the J&K Preparation and revision of market value guideline rules 2011. Besides, an amount of **Rs. 20,41,420/- (Rupees twenty lacs forty-one thousand four hundred twenty)**, value of the structure as assessed by the Superintending Engineer, PWD (R&B), Circle, Srinagar/Budgam, shall added to the value of the property in question.

c) That any permission under this Act i.e., J&K Migrant Immovable Property (Preservation, Protection & Restraint on Distress Sales), Act, 1997 and rules made there under, shall not be construed as permission for conversion or change of land use which may otherwise be prohibited by any Act / Rules there under for the time being in force.

d) That after completion of all registration formalities, the District Magistrate Srinagar (Custodian of the Migrant Immovable Property) handover the possession thereof through prescribed procedure.

DISCLAIMER: 1) THE INSTANT PERMISSION SHALL NOT BE TREATED AS A SUBSTITUTE FOR TITLE DOCUMENTS/SHARE OF THE APPLICANT/DISPUTE FREE NATURE OF THE PROPERTY/LAND USE PERMISSION ETC.

Om
18/12/23
**DIVISIONAL COMMISSIONER,
KASHMIR**

No: Div.Com/MLA/(3315)/2023

Dated: 18 - 12 - 2023

Copy to the: -

1. Financial Commissioner (R), J&K Govt. Jammu/Srinagar.
2. Relief Commissioner (Migrants), Jammu
3. Deputy Commissioner, Srinagar
4. Sr. Additional Advocate General, J&K High Court at Srinagar for information and with the request to file compliance report before the Hon'ble Court by or before next date of hearing.
5. Alienees namely **S/Sh. (1) Sandeep Dhar S/o Hira Lal Dhar R/o H. No. 710, Camp Road Opposite Telephone Exchange, Talab Tilloo, Jammu, (2) Meenakshi Koul/Dhar W/o Late Sudhir Dhar S/o Late Hira Lal Dhar, (3) Dushyant Dhar S/o Lt. Sudhir Dhar and (4) Amranta Dhar (minor) D/o Lt. Sudhir Dhar through her mother Meenakshi Koul/Dhar W/o Late Sudhir Dhar R's/o 4/125, Amba Theatre Park, Patoli Morh., Indira Vihar, Old Janipur, Jammu.**
6. Alienor namely **S/Sh. Triloki Nath Wali S/o Shri Hari Prasad Wali R/o Dukani Sangeen, Fateh Kadal, Srinagar A/P Migrant at Jammu**
7. Attorney Holder **Sh. Moti Lal Nehru S/o Pt. Bishember Nath Nehru R/o Gagribal, Srinagar**

.....FOR INFORMATION AND NECESSARY ACTION