

Jammu & Kashmir High Court - Srinagar Bench

Molvi Peer Noor Ul Haq vs State Of J&K; And Others on 7 February, 2018

Serial No.01

Regular List

HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR

PIL No.02/2014

C/W

PIL No.08/2017

Along with connected matters

Date of order:07.02.2018

Molvi Peer Noor-ul-Haq

Vs.

State of J&K & ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

Appearance:

For the Petitioner(s)

: Mr. Nadeem Qadiri, Adv.  
Mr. Shafaqat Nazir, Adv.  
Ms. Asma Rashid, Adv.  
Mr. Tufail, Adv. vice Mr. M. A. Qayoom, Adv.

For the Respondent(s)

: Mr. B. A. Dar, Sr. AAG.

Mr. T. M. Shamsi, ASGI.

Mr. Irfan Andleeb, Dy. AG.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

Per Yaqoob 'J':

(ORAL)

1. Vide order dated 31st January 2018 which was passed in connection with the latest development i.e. collapse of Jhelum embankment at Lasjan, a direction was issued to the Flood Control Department to repair the embankment and to file the photographic evidence which has been filed today same is taken on record. It was also informed that the Deputy Commissioner, Srinagar is enquiring into the matter to ascertain the exact cause of the collapse of the embankment at Lasjan. The report was directed to be submitted which has not been done. However learned Sr. AAG submits that the Government has directed the Deputy Commissioner, Srinagar to conduct the enquiry and to submit the report within fifteen days, however the stipulated time of fifteen days is expiring by tomorrow i.e. 08 th February 2018.

2. In view of this position, the Deputy Commissioner, Srinagar shall file the requisite report within eight days, in default to remain personally present.

3. The report as filed by the learned Sr. AAG which include Water Testing Report giving an insight regarding cause of collapse be taken on record. In addition thereto learned Amicus Curiae states

that he has personally visited the spot and had gathered some information. Now he has prepared the report which he will file by or before next date.

4. PIL No.02/2014 owes its origin for removal of encroachment of Padshahi Khul passing through Gulab Bagh, Rangpora, Dagerpora and Malbagh.

5. In the order dated 14th August, 2014, reference to the affidavit as was filed by the respondent was taken note of, in particular reference to the original width of the canal ranging from 17 feet to 27 feet which by afflux of time has squeezed to the mere width of 3 feet to 5 feet. Shrinking of the width of the canal was taken serious note of. The Chief Engineer concerned was directed to file an affidavit so as to show how many irrigation canals existed in the Kashmir Valley as per official record with their present status.

6. The affidavit was filed which has been taken note of in the order recorded on 24.11.2014 suggesting that as pre record, 522 canals are in existence and functional. In isolated cases, the canals passing through suburbs of Srinagar City and main towns have been encroached upon since last few decades because of urbanization. Timely action has not been taken for removal of encroachment. Chief Engineer and other statutory authorities of the respondent department were directed to take necessary steps for removal of encroachment and to file compliance report. Inspector General of Police, Kashmir, was to provide necessary assistance to the Chief Engineer.

7. In the said order, it had also been noticed that river Jhelum is the main aquatic life line in the Kashmir Valley. It was observed that it is the duty of the Chief Engineer and other statutory authorities to ensure removal of all encroachments from the banks of river Jhelum along its entire course.

8. Vide order dated 24.02.2015, it was directed that the Divisional Commissioner, Kashmir, with the active assistance of Chief Engineer, I&FC, Kashmir, and concerned Deputy Commissioners/SSPs shall within one week from the date of receipt of the order, initiate a drive for removing all the encroachments from the banks of river Jhelum and the original width of the river Jhelum be also restored by removing all encroachments whatever existed there.

9. In the order dated 29th March, 2017, while taking note of the report filed by the respondent Irrigation & Flood Control Department, undertaking to remove all sorts of encroachments and taking note of the dredging being carried out so as to retrieve encroached water bodies, the concerned Executive Engineers were to get the process of demarcation expedited so as to remove all encroachments.

10. Essence and object of the PIL is in the process of being achieved. A direction was issued for removing of encroachments from all the canals existing in the Kashmir Province. Deputy Commissioners of the concerned Districts were to monitor and to ensure removal of encroachment through concerned authorities. There has been some progress but latest status has not been filed. The Deputy Commissioners in their respective districts shall mobilize all concerned, in particular Irrigation and Flood Control Department in coordination with concerned Chief Engineer for

ensuring complete removal of encroachment from the canals in their respective districts.

11. To avoid any further devastating floods like that of 2014, all canals which, in fact, are tributaries leading to rival Jhelum are required to be restored to their original position by removing all encroachments and the river Jhelum is also required to be restored to its original position.

12. By or before next date, all the Deputy Commissioners shall ensure filing of latest status regarding removal of encroachment from the canals existing in their respective jurisdictions. The present progress of dredging and removal of encroachment from the banks of rival Jhelum shall also be reported.

13. Post on 8th March, 2018, in the regular cause list.

PIL No. 08/2014:

We have heard learned Amicus, Mr. Qadiri, at length.

Environmental Policy Group in this PIL have sought issue of mandamus so as to command the respondents to frame and execute a comprehensive Jhelum restoration and flood prevention plan on scientific lines so as to block the future recurrence of flood and inundation of residential areas and also to furnish details of the amounts received from the Central Government for restoration, repairs of the damaged breaches of Jhelum embankments/bunds and the amount spent so far on the execution of the said restoration work, further a command be issued to the respondents to ensure completion of dredging of river Jhelum within a stipulated period of time. It has also been prayed that the respondents be directed to undertake the dredging of Wular Lake for restoration of 40% of its lost storage capacity.

From time to time compliance reports have been filed but today learned Amicus apprised the Court that he with the active support of certain environmentalists and the persons interested in protection of environment have undertaken a process of evolving a comprehensive plan of action which will be futuristic.

The interest and concern shown by the learned Amicus in pursuing these matters is appreciable. Since he has sought time to supplement the pleadings by filing a comprehensive supplementary application/affidavit, he is permitted to do so with copy in advance to the learned counsel for the respondents so as to enable them to file response thereto by or before next date.

List as above.

(Ali Mohammad Magrey)  
Judge

(Mohammad Yaqoob Mir)  
Judge

Srinagar  
07.02.2018  
"Bhat Altaf PS"

