

Sr. No.02

Suppl. List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

PIL No.404/2011
along-with connected matters

Court on its own Motion

...Appellant(s)/Petitioner(s)

Through: None

Vs.

State of J&K and others

...Respondent(s)

Through: Mr. T.M. Shamsi, DSGI with Ms. Anjum, Advocate
Ms. Maha Majeed, Asst. Counsel vice
Mr. Mohsin Ul Qadri, Sr. AAG
Mr. Illyas Nazir Laway, GA

CORAM:

HON'BLE THE CHIEF JUSTICE

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

ORDER

24.08.2023

01. Heard Mr. Shamsi, learned DSGI, assisted by Ms. Anjum, counsel appearing on behalf of applicant-(Indian Army) as also Ms. Maha Majeed, learned counsel and Mr. Illyas Nazir, learned GA, on behalf of respondents.
02. The present application has been filed seeking permission of this Court in the backdrop of restraint imposed by this Court, to carry out maintenance and repairing works in respect of the existing structures in High Altitude Warfare School (HAWS) and other transit camps located in Sonamarg (J&K).
03. It has been submitted that these structures require urgent maintenance and repairing before the onset of winter, which otherwise will not be possible once winter sets in and time window is very small. It has

PIL No.404/2011
along-with connected matters

been submitted that these maintenance and repairing works are necessary to keep the Army Troops, engaged in counter insurgency operations and defence of the country in optimum preparedness, and as such, if these maintenance/repair works are not allowed to be undertaken immediately, it will seriously compromise with the preparedness of the Army troops stationed therein and those who are in transit using these facilities.

04. Learned counsel for the applicant submits that, unfortunately, because of certain stay order passed by this Court in this PIL, the Army Authorities are not able to execute the maintenance/repair works and accordingly, has sought permission of this Court to make an exception to the army applicant, to the orders passed by this Court preventing any construction work being undertaken under the jurisdiction of Sonamarg Development Authority (SDA) within whose jurisdiction these Army locations fall.

05. We have gone through the earlier orders passed by this Court.

06. In view of reports of indiscriminate and unauthorized constructions going on in Sonamarg area, which were brought to the notice of this Court, this Court took upon itself to treat the matter as a Public Interest Litigation to monitor the alarming situation prevailing there and sought reports from the concerned authorities and this Court also passed an order on 22.08.2017 and also directed that no construction activity be carried out.

07. The said interim order continued without any variation. However, subsequently, the said order was modified by this Court on 09.05.2018 permitting repairs/renovations of the existing structures

located within the jurisdiction of the SDA. While continuing the earlier direction that no fresh construction activity will be permitted in the area, it was, however, directed that where any application is made for effecting repairs/renovations in respect of the existing structures, the same may be permissible, if the Building Operations and Controlling Authority (BOCA) grants permission to that effect. Accordingly, it was directed that the authority i.e., Building Operations and Controlling Authority shall examine the applications if any, filed by the applicants seeking such permission.

08. The said order passed on 09.05.2018 was again modified by this Court on 22.10.2020 by making further directions as to how to deal with such applications for maintenance/renovations as mentioned in para 6 of the said order passed on 09.05.2018 which may not be reiterated here.

09. It appears that a number of applications came to be filed pursuant to the order passed on 22.10.2020 purportedly by misconstruing the order, which necessitated making certain clarifications and, this Court on 27.03.2023 taking into consideration the previous orders passed in that regard, including the order passed on 22.10.2020, that there shall be no fresh activity of construction to be carried out in respect of any building or structure within the area of the Sonamarg Development Authority, irrespective of whether there is any building permission granted for that purpose by any competent authority. It was further directed that renovation/repairing permitted by the Court shall be carried only after obtaining proper building permission from the BOCA, Sonamarg which was approved by the Court on 28.12.2022.

The Court also directed Chief Executive Officer, to take immediate steps to stop all fresh constructions in the area with or without permission and if any case of fresh construction with or without permission is brought to the notice of the Court, the Chief Executive Officer would be personally responsible and liable to be proceeded for contempt of the Court.

10. It has been submitted pursuant to the aforesaid order dated 27.03.2023 passed by this Court, there has been total stoppage of any construction activity including repairs etc, even where permission has been granted.

11. In this backdrop, the present application has been filed seeking permission of this Court for carrying out necessary maintenance /repairing works of the existing structures of the Army installations in Sonamarg.

12. Today when the matter was taken up, Mr. Shamsi, learned DSGI has furnished before us the details of the works for maintenance/repairs required to be executed in the Army installations in Sonamarg (HAWS) and the Sonamarg Military Stations in a sealed cover, by submitting that disclosure of the detail particulars may compromise with the security of these installations.

13. We have perused the same and we are satisfied that these works as mentioned in this report pertains to repairing works of the existing structures of the army in Sonamarg. The same is again kept in a sealed cover after perusal.

14. Considering that carrying out the said maintenance/repair works are urgently required, and the fact that this pertains to security of the

Nation which is of paramount importance, and thus cannot be equated with other commercial enterprises engaged in profit making activities, and the army/security forces can be treated to be a class by itself distinguishable from other commercial enterprises, we are of the view that an exception can be made to the restraint orders passed by this Court and the application should be allowed to carry out the maintenance/repairing works as mentioned in the report.

15. Under the circumstances, we hold that the bar placed by this Court should not come in the way of Building Operations and Controlling Authority to consider and give permission to the army authorities to undertake maintenance/repair work as sought by them.

16. Accordingly, we allow this application by directing that the restraint order passed by this Court on various dates, including on 27.03.2023 will not come in the way of grant of permission by the Building Operations and Controlling Authority to the army authorities for carrying out necessary maintenance/repairing works in Sonmarg army installations/ locations as sought by the army-applicant.

17. Application No.5120/2023 is accordingly *disposed of*.

18. List the main appeal on Monday i.e., 28th August, 2023.

(M.A. CHOWDHARY)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR
24.08.2023
Shameem H.