
(2014) 04 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : WPIL No. 29 of 2013 and WPIL No. 1 of 2014 and Others Writ
Petition (OWP) No. 1106 of 2013

A Citizen

APPELLANT

Vs

State of JandK and Others

RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Citation : AIR 2014 JK 48 : (2014) 4 JKJ 630

Hon'ble Judges : M.M. Kumar, C.J.; Muzaffar Hussain Attar, J

Bench : Division Bench

Advocate : Ajay Sharma, Advocate in WPIL No. 29/2013, Mr. Parag Sharma, Advocate, Mr. R.K. Gupta, Sr. Advocate, Mr. Prem Sadotra, Advocate in WPIL No. 1/2004, Mr. Manoj Bhat, Advocate in CMA No. 59/2014, Advocate for the Appellant; Seema Shekhar, AAG. and Mr. Adarsh Sharma, Advocate for the Respondent

Judgement

M.M. Kumar, C.J.—This Court has been entertaining various Public Interest Litigations highlighting the rampage violations of Master Plan

by constructing buildings in the non-conforming areas, raising of constructions on public lanes, agricultural land without seeking permission to

change the land use, raising of constructions without obtaining any sanction from the local authorities and blocking the public road/by-lanes etc.

2. On numerous occasions in both Wings of this Court at Srinagar as well as at Jammu, various directions have been issued for sealing or

demolishing all such buildings because such violations bring in the regime of lawlessness, defeat the planning, create extreme inconvenience to the

pedestrian and infact the law of Jungle prevails. However, the legislature in its wisdom has enacted an Act known as Jammu and Kashmir Civic

Laws (Special Provisions) Act, 2014, (for brevity, the Act) which has put a

moratorium period on sealing of some of such buildings, which have violated the Master Plan etc. postulating that the moratorium shall remain in force from the date of publication of the Act in the official gazette till

31.03.2015. It is appropriate to mention that the Act has been notified in the official gazette on 05.03.2014 and it has taken effect from that date

and it has not given retrospective effect.

3. Mr. R.K. Gupta, learned Amicus and Mr. Ajay Sharma, learned counsel for the petitioner have pointed that the directions issued by this Court

on 31.12.2013 would remain unaffected by the provisions of Section 5 of the Act inasmuch as the buildings or structures which are incomplete on

the date of commencement of the Act or which were currently under construction or buildings or structures erected on public land, public road or

any other public utility have been excluded from the operation of the Act. Buildings or structures not complying with the directions with regard to

safety standards, issued by the Government from time to time would also not be covered by the operation of the Act. The question whether such a

legislation has been enacted with the object of taking away the base of a judgment and order of the Court is yet to be decided as learned counsel

for the petitioners have requested for some time to challenge the constitutional validity of the Act. Learned counsel have argued that such a piece of

legislation has never been enacted and it patently goes against the fundamental law of the land that legislature cannot act as an appellate forum to

stay the directions of this Court. The theory of separation of powers distributing legislative and judicial power has been completely breached by

enacting such a piece of legislation. We leave all such issues to be considered when the constitutional validity of the Act is challenged. However, at

this stage the submission has also been made that buildings and structures which do not fall within the preview of Section 5 of the Act would

continue to be governed by the orders passed by this Court from time to time. In that regard our attention has been drawn to the directions issued

by this Court on 31.12.2013, which are as under:-

2. We have heard learned counsel for the parties at length and find that the illegal constructions in brazen disregard of Municipal and Urban Laws

have taken place without any check by the authorities. After hearing the learned counsel and perusing the files we feel that illegal constructions

could be classified in the following categories:-

(a) Commercial/residential or other buildings which have come up completely without permission of the local bodies like Municipal Committee or

Development Authority.

(b) Illegal constructions which have come up and in violation of Master Plan.

(c) Illegal constructions which have been raised on agricultural land without seeking permission to convert change of use of the same for

commercial/residential or other purpose.

(d) The structures which have come up where permissions for construction have been granted when the proceedings for acquisition under the Land

Acquisition Act were in progress namely, after issuance of notification under Sections 4 and 6.

(e) The structure blocking public utilities like by-lanes etc. (CMA No. 776).

3. The Municipal Committee Katra has given a list of 27 buildings which have been constructed within the Katra Municipal area within last two

years without permission. Likewise there are constructions which have been illustrated and have come up in violation of the Master Plan as has

been indicated in the status report filed by the Divisional Commissioner (para 6 of the report).

4. As a first step we direct the Divisional Commissioner, Jammu and the Deputy Commissioner, Reasi to seal all the buildings which fall in the

preceding five categories irrespective of the fact when such buildings have been constructed. The needful shall be done at the earliest. In case any

police help is required the Director General of Police is directed to make available all the helps for implementing the directions. HHHH..

4. The aforesaid order was subject matter of challenge before Hon'ble the Supreme Court at the instance of some parties, who were adversely

affected i.e. SLP (Civil) 690-695/2014 which were dismissed on 15.01.2014. However, on the statement made by the counsel, who appeared for

the aggrieved parties, liberty was granted to those persons to file review application(s) because it was stated before the Supreme Court that there

were factual errors in order dated 31.12.2013. There after applications were filed being RPIL Nos. 1/2014 to 6/2014 and while dismissing the

applications with costs following order was passed on 30.01.2014.

1. These set of applications pray for review of order dated 31.12.2013 passed by this Court in a public interest litigation. In the detailed order we

have found raising of illegal construction in brazen disregard to the Municipal and Urban laws in the holly city of Katra. After hearing learned

counsel for the parties, we have classified illegal constructions in five categories and have ordered the Divisional Commissioner, Jammu and Deputy

Commissioner, Reasi to seal all the buildings which fall in those five categories irrespective of the fact when such buildings have been constructed.

Obviously the sealing orders were to apply to the 27 buildings which have been constructed in Katra municipal area as indicated by the Municipal

Committee, Katra in its status report because those buildings have been constructed without obtaining permission of any local body.

3. The applicants challenged the interim order before Hon'ble the Supreme Court by filing Special Leave Petition. Their Lordships of Supreme

Court after hearing the learned counsel have passed the following order:

We have heard Mr. A. Sharan, learned senior counsel for the petitioners.

Inter alia, it appears from the order that the High Court considered the list given by the Municipal Committee which indicated that 27 buildings

have been constructed within last two years without permission.

Mr. A. Sharan, learned senior counsel, submits that this is factually incorrect.

If that is so, liberty is granted to the petitioners to apply to the High Court for review of the order.

We are informed by Mr. A. Sharan, learned senior counsel, that the High Court is closed for the winter vacation. He further submits that even the

Vacation Judge shall sit now only on January 22, 2014.

In view of the above, let status quo be maintained for two weeks from today.

However, it is clarified that the consideration of the matter by the high Court on review application that may be made by the petitioners shall not be

influenced by the order of status quo. The review application shall be considered on its own merits in accordance with law. Special leave petitions

are disposed of.

4. A perusal of the aforesaid order shows that the issue concerning 27 buildings which have been constructed within last two years without

obtaining permission from the Municipal Committee was raised before the

Supreme Court. Their lordships noticed the contention raised on behalf of the applicants that there were factual errors and on that basis liberty was granted to the applicants to apply to the High Court for review of the order. On account of vacation in the High Court status quo was ordered to be maintained for two weeks from the date of order which was passed by Hon'ble the Supreme Court on 15.01.2014.

5. We have heard Mr. Vikram Sharma, learned counsel for the review applicants at length and repeatedly asked him to point out any factual error in the order under review or any such error in the stand of the Municipal Committee, Katra concerning 27 buildings constructed without permission of any local body. On the repeated enquiries by the Bench, learned counsel has not been able to point out any factual error either in the order under review or the factum of lack of permission for raising construction. All that has been stated is that in the Master Plan even the agricultural land has been reflected where construction could be raised. That does not advance the case of the review applicants. Learned counsel has gone to the extent of submitting that in the SLP filed by the applicants it was nowhere stated that there was factual error in the order under review dated 31.12.2013.

6. We are constrained to observe that the applicants had the audacity of making misleading statement before Hon'ble the Supreme Court as noticed in the interim order dated 15.01.2014 when it was urged that there are factual errors with regard to the list given by the Municipal Committee in respect of 27 buildings constructed without permission. We deprecate the tendency of the applicants to make wrong statement in order to obtain permission for filing of review petition. Mr. Vikram Sharma has gone to the extent of arguing that no allegation of factual error has ever been raised in the SLP.

7. As a sequel to the above discussion, the review applications are devoid of any merit. Accordingly these applications are dismissed with costs of Rs. 10,000/- (ten thousand) each. The amount be deposited by each one of the applicant with the Secretary, Legal Service Committee of the High Court. It would, however, be open to the applicants to join as party respondents in the main PIL, if so advised. Copy of this order be placed on each file.

5. Order dated 30.01.2014 was again subjected to SLP Nos. 3781-3796/2014 but the same were dismissed. Therefore, there was no

impediment left in the enforcement and implementation of the directions issued by this Court for sealing and demolishing the various categories of

buildings listed in para 2 and for enforcing directions issued in paras 3 and 4 of the order. However, on one pretext or the other the respondents

have been dragging their feet and are not implementing the directions which called for their explanation under contempt jurisdiction. At this stage,

Mr. Ajay Sharma, learned counsel for the petitioner has pointed out various things from the status report dated 18.09.2013 filed by the Divisional

Commissioner, Jammu-respondent No. 3. Along with the status report detail of unauthorized buildings/structures, which were coming up in

violation of building permissions was attached as furnished by the Deputy Commissioner, Reasi on 16.09.2013. A list of 27 structures has been

given and it shows that in most of the cases the construction work was stopped as it was without permission. The nature of the buildings has also

been disclosed as commercial/residential etc. Therefore, it will be covered by the exception created by Section 5 of the Act because they are

incomplete and action in accordance with the directions issued in order dated 31.12.2013 has to continue. Likewise, our attention has also been

drawn to the report submitted by the Chief Executive Officer, Katra Development Authority, Katra. In the status report filed before this Court

tabulated information has been furnished, listing 17 buildings where construction work was under progress but it was stopped because the

construction which was without permission or against the master plan or any other rules/regulations. The tabulated information furnished to the

Court, reads thus:-

S.No.Details of case/Name/Construction Present status Details of violation

The construction work was

Abdul Karim Wani s/o Sh. Ghulam Ahmed r/o Jammu started before the KDA and it was stopped by the KDA as

1. the construction was not

commercial building Construction Stopped

in conformity with the master plan/by laws.

Sh. Bansi Lal Sharma s/o Sh. Hari Krishan Sharma R/O KL

2. -do-

Undrori Hotel JCM Construction stopped

Commercial building Sh. Raj Paul Singh s/o Capt. Sewa Singh & Sh.

3. -do- -doof

Surinder Singh s/o Malik Singh

Building belonging to Swami Girdhar Paramhans Ashram

4. -do- -do-

Ranjari, at Katra road Bajalan

Commercial building of Mohan Singh S/o Sh. Gulab Singh R/o

5. -do- -do-

Kundrorian at Railway Road Chowk

Hotel of Sh. Sunil Jain s/o Sh. Subash Chander Jain R/o

6. -do- -do-

Gandhi Nagar, Jammu

Commercial building of Sh. Sourabh Thapa

7. -do- -do-

s/o Sh. JagjitRajThapa on Jammu Road

Commercial Building of Sh. Avtar Sethi s/o

8. -do- -do-

Guruvakhash Singh Sethi r/o Jammu

Shops on Railway road belonging to Sh. Sanjay Kumar s/o Sh.

9. -do- -do-

Brhmsaroop at Ward No.1 Katra

Commercial building of Sh. Kuldeep Kumar

10. -do- -do-

Kohli s/o Sh.C.R. Kohli at ward no.2 Katra

11. Shops/Store of Sh. Chhotu Ram s/o Sh. Bansi Lal R/O Katra W.No. 4 -do- -do-

Shops of Sh. Deepak Kumar S/o Sh. Som

12. -do- -do-

Nath Dubey r/o Kundrorian

13. Shops of Sh. Kuldeep Kumar s/o Sh. Kalu Ram R/o Kundrorian -do- -do-
Sh. Sourabh Sharma S/O Sh. Lt. Tirath Ram R/o Kundrorian near

14. -do- -do-

Railway crossing

Building/shops constructed by Sh.

15. Punit Jain S/o SubashChander Jain -do- -do-

R/O Gandhi Nagar on Railway road

Commercial building/shop of Sh. Vinod Kumar Jain s/o KasturiLal Jain

16. -do- -do

r/o Gandhi Nagar, Jammu

17. Shops of Sh. Varinder Kapoor and Babloo -do- -do-

In respect of all these 17 buildings also the directions issued on 31.12.2013 would continue to apply and the action is required to be taken by the

Chief Executive Officer, Katra Development Authority and Deputy Commissioner, Reasi.

6. We also wish to make it clear that apart from the persons to which a reference has been made in the status report and also in this order if there

are building/structures falling in the same category authorities like Chief Executive Officer, KDA and Deputy Commissioner, Reasi would deal with

them with even handedly by applying the directions issued by this Court on 31.12.2013.

7. Likewise our attention has been drawn to the status report filed on behalf of Deputy Commissioner, Reasi on 24.03.2014. In para 10 of the

report, it has been stated that mandatory notices to 70 persons have been issued to ascertain violation of Section 13 of the Agrarian Reforms Act

and the Rules framed thereunder, which are based on the report of Tehsildar, Reasi. In this context the sealing process was to be initiated on

receipt of the report of violation concerning Section 13 of the Agrarian Reforms Act. However, no status has been filed till date because this

category of buildings would also be outside the purview of Section 5 of the Act. It is also pertinent to notice that Deputy Commissioner, Reasi had

issued an order dated 29.05.2013 banning all such constructions where

permission u/s 13 of the Agrarian Reforms Act has not been obtained, apart from banning all constructions coming up in violation of Master Plan/ Municipal Laws. If such ban was already imposed then any construction which has come up thereafter, although may be before 05.03.2014 would also not be covered by the provisions of Section 5 of the Act.

8. Mr. Parag Sharma has also raised the issue that some people have blocked the by-lanes/public roads by raising construction. This category of cases has also been excluded from the operation of the Act, as is evident from the perusal of Section 5 of the Act.

9. On the last date of hearing this Court has taken notice of demarcation report filed by Sh. Inderjit Singh, D.F.O. (Demarcation) and has annexed

a copy of the communication sent by the Divisional Forest Officer, Forest Division Reasi to the Chief Conservator of Forests, Jammu on

08.03.2014 informing him that the work of mapping up of Katra area from Domail (Moori) to Katra in association with revenue authorities has

been completed by the Divisional Forest Officer, (Demarcation) Division-1, Jammu and the report submitted by the said authority has been

forwarded to the District Development Commissioner, Reasi on 21.02.2014 as also copy to Chief Conservator of Forests, Jammu. The order

further noted that the document annexed with Annexure-R-1 shows encroachment of forest land in Reasi Forest Division Katra Range along side

the road from Domail to Katra and 17 persons have been identified, who have encroached upon the forest land. It was directed to initiate

necessary steps for removing encroachment from the forest land and the compliance report was to be filed by the authorities. In respect of those

directions a status report has been filed claiming that notices u/s 48 of the Forest Act, 1987 have already been issued to some of the persons and

to others summary eviction orders have also been issued. There are also cases which required re-joint verification and a request has been made to

the Deputy Commissioner, Reasi on 14.03.2014. However, report submitted by the D.F.O. on 15.03.2014 has some additional names as is

evident from the report dated 18.03.2014 (Annexure R-1). The list shows that no action has been taken against the encroachers like Government

Middle School, Moori, GREF Troad, Tara Chand s/o Amar Nath r/o Troad, Police Post, Troad and Joginder s/o Tej Ram r/o Troad. Why these

persons/institutions have been left out has to be explained by the Deputy Commissioner, Reasi. Let status report with regard to the persons who

have already been issued notices or eviction orders or whose joint re-verification was required to be done be filed along with the status report with

regard to these five persons, who have been named by the D.F.O. as encroachers in his report dated 15.03.2014. The needful shall now be done

within a period of two weeks with a copy in advance to the counsel opposite.

10. We also wish to make it clear that provisions of the Act in unmistakable terms clarify that the action which is prohibited by the provisions of

Section 4(1) of the Act would not apply to such buildings or structures which have been constructed after coming into force of the act i.e.

05.03.2014. It also does not apply to structures which do not conform to the safety standards as laid down by the Government from time to time.

Therefore, Chief Secretary including Deputy Commissioners, Reasi, Jammu and Srinagar are directed to ensure that no illegal construction is

permitted to be raised after 05.03.2014 which may be in violation of the provisions of Master Plan, without permission from local body or at

public lane/roads. It is also directed that no such building should be constructed which fail to conform the safety standards as laid down by the

Government from time to time. The compliance report in that regard be also filed by the adjourned date. The record concerning the Act along with

the reasons, objects and other record be produced before this Court on the next date of hearing.

11. We also wish to clarify that this Court being custodia legis, no other Court, Tribunal or any other Forum would be competent to entertain any

appeal/application/suit etc and the same may be placed before this Court.

CMA No. 59/2014:

12. Notice of the application.

13. Let copy of the application along with complete annexures be furnished to the learned state counsel as well as to the counsel for the petitioner,

who may file objections before the next date of hearing with a copy in advance to the counsel for the applicant.

14. List again on 21.04.2014.

15. Copies of the order be furnished to learned counsel for the parties today itself under the seal and signatures of the Bench Secretary.