

(2018) 12 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Public Interest Litigation (PIL) No. 29 Of 2013, IA No. 777, 789 Of 2013, 59, 327 Of 2014, 01, 84, 85 Of 2015, 02, 05 Of 2017, 02, 03 04, 05, 06 Of 2018

A Citizen @APPELLANT@Hash State And Ors

Date of Decision : 03-12-2018

Acts Referred:

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 4, 6
Agrarian Reforms Act, 1976 — Section 13
Jammu And Kashmir Control Of Building Operations Regulations, 1998 — Regulation 11

Citation : (2018) 12 J&K CK 0010

Hon'ble Judges : Gita Mittal, CJ;Tashi Rabstan, J

Bench : Division Bench

Advocate : Ajay Sharma, Parag Sharma, S.S.Nanda, Adarsh Sharma, Anil Khajuria, Sachin Sharma

Judgement

1 The instant case has been entertained as Public Interest Litigation in July, 2013 on a complaint received in the Registry of this Court regarding the illegal constructions being raised around the upcoming Railway Station at Katra which were within the knowledge of Katra Development Authority.

2 Our attention has been drawn to several orders, especially the order dated 31 st December, 2013 wherein illegal constructions stands clarified 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 in violation of the Master Plan.

© 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 structures blocking public utilities like by-lanes etc.

3 We are informed by learned counsel for the petitioner that despite several orders passed in the writ petition, the official respondents have not taken any steps for ensuring removal of the encroachments or the illegal constructions.

4 Mr. S.S.Nanda learned counsel for Katra Municipal Committee submits that a detailed report has been filed on 24th May, 2018. A perusal thereof would show that this urgent matter is not receiving attention and the same is being treated as a matter of routine. Notices claim to have been issued for removal of illegal constructions. However, the violator has challenged the same before the J&K Special Tribunal, Jammu resulting compounding of illegal/unauthorized constructions. It, therefore, becomes necessary to set out the parameters within which the discretion can be exercised to permit compounding of illegal/unauthorized constructions. In this regard, we hereunder extract the relevant observations of the Hon'ble Supreme Court in the judgment reported at 2004 (8) SCC 733, Friends Colony Development ... vs State Of Orissa & Ors stating as follows:

"Structural and lot-area regulations authorize the municipal authorities to regulate and restrict the height, number of stories and other structures; the percentage of a plot that may be occupied; the size of yards, courts, and open spaces; the density of population; and the location and use of buildings and structures. All these have in view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building. [For a detailed discussion reference may be had to the chapter on Zoning and Planning in American Jurisprudence, 2d, Vol.82.] Though the municipal laws permit deviations from sanctioned constructions being regularized by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some mis-understanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning

profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into under hand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilized for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions".

5 The principles which are to govern the request for compounding the illegal constructions are set out above. Regulation 11 of The Jammu and Kashmir Control of Building Operations Regulations, 1998 prescribes non-compoundable violations.

6 No deliberate violation of the Master Plan or the Building Bye-laws can be permitted to be compounded. It is only the genuine mistakes while effecting constructions which are permitted to be compounded. Therefore, no compounding orders can be passed in routine, as appears to have been happening in the instant case.

7 It is further impossible to fathom that there is not a single building which does not merit further action against for the building violations in accordance with Municipal Laws by the Municipal Corporation/Authority. Building by-laws are framed keeping in view the interest of the entire community in mind. They cannot be permitted to be violated with such impunity. Further more, the matter becomes even more urgent when illegal encroachments are effected on public land. To say the least, in the instant case, we find that even agricultural land has been permitted to put to even commercial use without seeking permission. Change of user cannot be compounded under any law.

8 The record also contains reference to 71 persons who have raised constructions on agricultural land without receiving any permission for change of user for commercial or residential purpose. This was in the teeth of Section 13 of Agrarian Reforms Act 1976. Notices stand issued to the said persons, but no action has been taken for the violations.

9 We make it clear that we shall take a strict view against any person or authority found violating the requirements of law. Only such deviations which are covered under the prescriptions of the above judicial pronouncement and additionally covered under Regulation 11 of the Regulations, 1998 can be made the subject matter of compounding and not others.

10 We are informed by learned counsel for the Katra Development Authority that the Katra Development Authority has been compelled to file writ petitions challenging the orders passed by the J&K Special Tribunal permitting compounding of deviations. We request the concerned learned Single Judge to expeditiously dispose of all the said writ petitions and not permit any adjournments thereto. Liberty is given to the learned counsel for the Katra Development Authority to place copy of this order before the learned Single Judge.

11 It is trite that the pronouncement of the Supreme Court shall bind consideration of all the matters which are pending in this Court. We would also direct the Katra Development Authority to place the law laid down by the Supreme Court as well as the Regulations before the J&K Special Tribunal which is considering the request for compounding made by the persons. In no case, deliberate violation(s) of the sanctioned building plan or the Master Plan can be permitted to be compounded. It has to be kept in mind that the Municipal Laws provided to ensure plan development within the municipal limits. The very object of requiring the sanctioned plan cannot be permitted to be obliterated by a person who effect the deliberate and rampant illegal constructions for their personal and private gains. In no circumstance, any person or the authority can be permitted to violate the Master Plan.

12 We are informed by Mr. S.S.Nanda, learned Sr. AAG that in the report No. 41 filed under the signatures of Mr. Ghulam Rasool, Executive Engineer Local Bodies Div-II Jammu, pursuant to ENIT dated 21st April, 2018, the official respondents are in the process of finalization of the matter in favour of the successful bidder namely M/S JBR Technologies Pvt. Ltd. The matter shall be expedited so that establishment of Integrated Solid Waste Management Project at Katra is not delayed any further. A status report in this regard shall be filed before us before the next date.

13 An undated report has been accepted from Mr. S.S. Nanda, learned Sr. AAG. Let an explanation be called for from the In-charge, Filing Counter as to why such a report has been accepted. The said report has been signed by Mr. K.K.Chalotra, Chief Executive Officer, Municipal Committee, Katra which includes list of buildings stated to have been sealed and whose matters are stated to be pending before the J&K Special Tribunal, Jammu..

14 The J&K Special Tribunal shall ensure that all matters relating to unauthorized constructions are expeditiously disposed of within a period of four weeks from the date of receipt of copy of this order in the light of the judicial precedents and the law as noted above. Municipal Authorities shall place the status of the matters pending before the Tribunal before us within six weeks from today. It shall be the responsibility of the Municipal Committee Katra to place copy of this order before the J&K Special Tribunal.

15 OWP Nos. 929/2013 and 50/2013 shall be placed before the learned Single Judge as per the Roster. The same shall be considered in the light of the legal position recorded by this Court.

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16 Time is sought on behalf of the non-applicants and the Katra Development Authority to file objections. Let the same be filed within three weeks from today.

17 List on 20th February 2019 along with PIL No. 29/2013.

18 Copies of the applications be furnished to learned counsel for the non-

applicants within two days from today.