

(2012) 10 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Review No. 13 of 2012 c/w LPA No. 29 of 2012

Aga Nasir Ali

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Citation : (2012) 10 J&K CK 0003

Hon'ble Judges : M.M. Kumar, C.J; Mohammad Yaqoob Mir, J

Bench : Division Bench

Advocate : Altaf Naik and Mr. Athar Hussain, for the Appellant; M.I. Qadiri, Advocate and Mr. Shah Aamir, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, CJ.

1. This is an application with a prayer for corrections in the order dated 06.09.2012 passed by this Court. According to the averments made in the

application, the total area of land utilized by the State- respondent is 01 Kanal 02 Marlas whereas in the order the total area has been shown to be

04 Kanals 02 Marlas. Notice of motion. Mr. Athar Hussain accepts notice.

2. With the agreement of the parties the application for review is taken on board and the arguments have been heard.

3. Mr. Qadiri, learned Advocate General has argued that only 01 Kanal 02 Marlas of land covered by Khasra No. 344/182 has been utilized by

construction of road and rest of the land was vacant and, therefore, to say 04 Kanals 02 Marlas of land belonging to the writ petitioner-appellant

has been utilized by the Department would not be correct and to that extent order dated 06.09.2012 need to be modified.

4. However, Mr. Naik, learned counsel for the non-applicant has brought to our notice the status report dated 17.12.2011 filed by the Deputy

Commissioner, Anantnag. According to para 1 of the status report, land measuring 04 Kanals 02 Marlas comprised in Khasra No. 344/182

situated at Village Mamal Tehsil Pahalgam belongs to the writ petitioner-appellant and the same has been occupied by the Executive Engineer,

MHP Pahalgam for construction of Mini Hydel Project, Pahalgam. Again, a reference has been made to paras 8 and 11. Mr. Naik has also drawn

our attention to paras 6, 7 and 9 of the written statement of the State filed in response to the writ petition.

5. After hearing learned counsel for the parties and perusing the aforesaid record, we find that the total land belonging to the non-applicant has

been under the occupation of the State- Executive Engineer, MHP Pahalgam, although out of 4.2 Marlas of land only 01 Kanal 02 Marlas has

been utilized for construction of road. These facts are evident from the status report dated 17.12.2011 filed by the Deputy Commissioner read

with paras 6, 7 & 9 of the written statement. Therefore, there is no room for review of order dated 06.09.2012 as there is no error apparent on

the face of the record.

6. The application is, accordingly, dismissed.

7. On 06.09.2012, we have passed a detailed order asking the respondent-State to pay the rental/usage charges to the writ petitioner-appellant @

Rs.13,500/- per kanal per annum commencing from the year 1989 till 2012 in respect of the total land measuring 04 Kanals 02 Marlas.

8. Mr. M.I. Qadri, learned Advocate General has stated that the possession of the land was to be handed over to the writ petitioner-appellant

within two weeks.

9. In pursuance of the direction issued, the amount of Rs.3,41,550/- was deposited on 20.09.2012 and another amount of Rs.9,31,500/- has been

deposited on 28.09.2012 which has been kept in the form of FDR. According to the affidavit filed, the demarcation of the land has already taken

place and the land measuring 04 Kanals 02 Marlas has been identified and the possession has been offered to the writ petitioner-appellant. Copies

of the demarcation report and offer of possession have been attached with the review application (Annexure-IV). The writ petitioner-appellant has

been allowed opportunity to use the land as per his desires which is clear from order dated 17.09.2012 (Annexure-IV). The order has been

passed by the Executive Engineer, C.M.D Sindh Projects Kangan.

10. Keeping in view the aforesaid facts, we dispose of the appeal with a direction to the Registry to disburse the amount deposited on 20.09.2012

and 28.09.2012 to the writ petitioner-appellant. The writ petitioner-appellant is at liberty to use the land as per his discretion being its full owner.

The amount shall be paid by draft or by accounts payees cheque at the expense of the writ petitioner-appellant. The Registrar Judicial of this Court

shall prepare a draft/cheque in payees account in the name of the writ petitioner-appellant and personally deliver the same to him as the petitioner-

appellant is said to be resident of Srinagar.