

(2019) 05 J&K CK 0053

In the Jammu And Kashmir High Court

Case No : Other Writ Petition (OWP) No. 1464 Of 2014, IA No. 01 Of 2016, 01 Of 2018, 1959 Of 2019

Inhabitants Of Village Jamasian

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 24-05-2019

Acts Referred:

Citation : (2019) 05 J&K CK 0053

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Kapil Gupta

Final Decision : Dismissed

Judgement

1. Petitioner had initially filed a writ petition bearing OWP No.769/2009 calling into question the allotment order issued by the Executive Engineer, Public Works Department, Special Sub-Division Mahore District Reasi in favour of respondent No.7 for construction of a building to house Health "Sub-Centre" (Dispensary) at a distance of 4 kms from its present location. The said writ petition was disposed of by this Court vide order dated 06.08.2010, directing as under :-

"In view of the submissions made by the learned counsel for the parties and taking into consideration that a representation has been filed by the petitioners the district Magistrate, Reasi before whom the said representation is pending, is arrayed as party respondent No.6 in the writ petition. The said officer shall consider and dispose of the representation of the petitioners by passed and speaking order within a period of six weeks from the date a copy of this order is made available to aforesaid officer by the petitioners."

2. In compliance to the said order, respondent No.3/District Magistrate Reasi vide his order dated 15.10.2010 considered the representation of the petitioner and held as under :-

"In view of the facts mentioned above, undersigned is the opinion that the

representation submitted by Sh. Ghulam Nabi S/o Abdullah Malik R/o Jamslan carries no weight. Since newly constructed building is located at a distance of 1.4 km only from the existing site and building of the Sub Centre has been constructed and maximum for the population can be benefited by shifting of Health "Sub Centre" (Dispensary) to the newly constructed building. Therefore, the representation submitted by Sh. Ghulam Nabi S/o Abdullah is disposed off accordingly."

3. This order dated 15.10.2010 has been assailed by the petitioner in the present writ petition. A writ of mandamus is sought by the petitioner to command the respondents to continue the Health "Sub Centre" (Dispensary) at village Jamslan (Mohra Mokha Gali) and shifting the same from its present venue/location to the different location which according to the petitioner is 4 km away.

4. It is contended by the petitioner that the present location at Mohra Mokha Gali village Jamslan is strategically located and all the patients including the people of the area can reach the venue of the Health "Sub Centre" (Dispensary) without any inconvenience or any harassment as they have been utilizing the service till date. It is also submitted that shifting of the present location of the building is to the disadvantage and detriment of the whole of the people in village Jamslan. They also stated that they are ready to provide two kanals of land without any cost to the department for construction of new building in the vicinity of the present location. It is also stated that the petitioners had, in fact, given an affidavit also to the department that he would provide land which could be utilized for the purpose of construction of the building.

5. The only grievance of the petitioner against shifting of the Health "Sub Centre" (Dispensary) is at a distance of 4 Kms away from the present location and, as such, not easily accessible, therefore, the villagers had passed a resolution urging the respondents to construct a new building i.e., Health "Sub Centre" (Dispensary) in the vicinity of the existing Health "Sub Centre" (Dispensary), thus, the petitioners are aggrieved of the order dated 15.10.2010 passed by the District Magistrate, Reasi turning down the request of the petitioners for continuing with the Health "Sub Centre" (Dispensary) in the said location. Petitioners are also aggrieved of the enquiry which has been conducted by the Sub-Divisional Magistrate, Mahore without associating him at his back.

6. Respondents/department have filed their objections and have stated that the Sub-Divisional Magistrate, Mahore i.e., respondent No.4 and Block Medical Officer, Block Mahore i.e., respondent No.6 conducted a detailed enquiry and furnished the report dated 25.09.2010 and as per the report, distance between the newly constructed building and existing site is 1.4 kms by road only. Lumberdar, Chowkidar and other prominent persons have also stated that the newly constructed building for Health "Sub Centre" (Dispensary) is more convenient which covers maximum of the public of the area and more beneficial to the public as compared to the existing site. It is also stated that 88 persons

favoured that Health "Sub Centre" (Dispensary) should be shifted at the existing place and 108 persons favour that "Sub Centre" (Dispensary) be shifted to the newly constructed building which would benefit the whole population of the area, thus, keeping in view the interest of the whole public, respondent has passed this order.

7. Respondents have also stated that the building Health "Sub Centre" (Dispensary) was complete in all respects and despite incurring lot of expenditure on the construction of dispensary for the welfare of the people which is only few yards away from the existing rented building and, as such, is causing a huge loss to the State Exchequer.

8. Thus, Health "Sub Centre" (Dispensary) which is for the benefit of over all public and keeping in view the fact that the statement of the inhabitants of the area in which 108 people favoured the shifting of Health "Sub Centre" (Dispensary) to the newly constructed building and as it is more convenient and covers the maximum area and reaches out to the maximum people of the area and more beneficial, thus, the order was rightly passed by the District Magistrate Reasi, which is in the public interest, holding that the representation of the petitioner does not carry any weight-age and more so, when the existing building was on rented accommodation.

9. In view of the above, there is no merit in this petition, which is accordingly, dismissed alongwith connected IAs.