

(2021) 09 J&K CK 0057

In the Jammu And Kashmir High Court

Case No : Public Interest Litigation No. 02 Of 2014

Moulvi Peer Noor-Ul-Haq

APPELLANT

Vs

Chief Engineer & Ors

RESPONDENT

Date of Decision : 29-09-2021

Acts Referred:

Citation : (2021) 09 J&K CK 0057

Hon'ble Judges : Pankaj Mithal,CJ;Vinod Chatterji Koul, J

Bench : Division Bench

Advocate : B. A. Dar, Tahir Majid Shamsi, Moomin Khan

Judgement

1. The aforesaid Public Interest Litigation was initiated for the clearance and removal of encroachments from the vicinity to the villages of Rangpora, Daugerpora and Malbagh all of which falls in the course of Padshahi Canal which has its origin from River Sindh in Ganderbal and passes through the aforesaid villages before terminating at Lal Bazar, Srinagar.

2. Originally in the writ petition, Chief Engineer, Public Health Engineering (PHE), & Irrigation, Srinagar and Executive Engineer PHE and Irrigation Srinagar were arrayed as the 1st and the 2nd respondent respectively.

3. We, however, find that from time to time, directions have been issued to various other authorities also even though they were not arrayed as parties to the petition. There may have been some directions to implead some other State respondents as parties, but probably such directions have not been carried out.

4. In the ends of justice to set straight the record, we direct for impleadment of Commissioner/Secretary to Government, Forest, Environment and Ecology Department, Union Territory of J&K as 3rd respondent, Commissioner/Secretary To Government, Department of Disaster Management, Relief, Rehabilitation and Reconstruction as 4th respondent, Chief Engineer, Irrigation and Flood Control Department as the 5th respondent, the Director, Fisheries as 6th respondent, the Divisional Commissioner, Kashmir and Deputy Commissioners of Anantnag,

Pulwama, Srinagar & Budgam and Baramulla are also directed to be impleaded as respondents. Registry to update the cause title.

5. The court vide one of its orders dated 24th November 2014 appears to have enlarged the jurisdiction of this PIL and in addition to the removal of encroachments from the sides of the Padshahi Kohal Canal included River Jehlum within its ambit. It was observed that River Jehlum is one of the oldest rivers of the valley alongside of which many civilizations were set up in the past, but the insatiable human greed is bent upon to destroy its beauty and serenity. Therefore the Chief Engineer, Irrigation and Flood Control Department was held to be under obligation to ensure removal of all encroachments from its banks along its entire course. In context to Padshahi Canal, the Chief Engineer, Irrigation and Flood Control Department was required to disclose the number of irrigation canals that exist in valley and to give their present status as also the original width of the canal.

6. In view of the aforesaid facts and circumstances, in this Public Interest Litigation, the Court is concerned with the preservation, clearance and development of Padshahi Canal and River Jehlum.

7. Directions were issued to the Deputy Commissioner, Srinagar to get the area of the Padshahi Canal demarcated in liaison with the Chief Engineer, Irrigation and Flood Control Department and thereafter to ensure removal of all encroachments and to submit report to the court.

The court vide order dated 24th February 2015 constituted a Committee headed by Divisional Commissioner, Kashmir, the Chief Engineer, Irrigation and Flood Control Department and Deputy Commissioners of Districts Anantnag, Pulwama, Srinagar & Budgam and Baramulla as its members as also Senior Superintendents of Police of the above districts.

8. The Committee was entrusted with the task of restoring the original width of the River Jehlum and for the removal of all encroachment without any compromise or laxity and to ensure the effective implementation of the J&K Water Resources (Regulation and Management Act) 2010. It may not be out of place to mention here that one of the basic factor contributing to the devastating floods of September 2014 in the Valley was narrowing down of River Jehlum due to encroachment on its sides and the non-silting of the river. Accordingly, directions were issued to the authorities to draw a plan for the preservation of the River Jehlum and the canals in order to avoid future calamity of the same nature. The court observed that the Engineers of the Irrigation and Flood Control Department are equally responsible for the Floods of September 2014 and that they have to be adequately dealt with for dereliction of their duty/active connivance with the encroachers.

9. The respondents specially the Chief Engineer, Irrigation & Flood Control Department has filed a compliance report/status report from time to time and has placed on record that large number of Kacha and Pacca structures, boundary

walls etc. have been removed from the banks of the river.

10. Appreciating the efforts of the respondents in assisting the court by submitting reports in compliance of the orders of the Court, we now expect that Divisional Commissioner, Kashmir who is heading the Committee constituted by the Court to furnish a fresh status report as to the actions taken by the Committee with details of the meetings. The Chief Engineer, Irrigation & Flood Control Department is directed to submit in a tabulation form the entire exercise his department has taken right from the time of initiation of this PIL till date with reference to the original length and breadth of the River and the Padshahi Canal and their present status regarding the number of encroachments removed, and the steps that are being taken in that regard.

11. The respondents shall also place before the Court a complete roadmap which they propose to implement for the cleanliness, preservation and the development of the River and the canals. Specific report may be called for from each of the Deputy Commissioners of the districts referred to above who are members of the Committee with regard to the position of the river and the canal existing in their district concerned.

12. All the respondents are directed to ensure that no drain/waste water or effluents or sewage or garbage is dumped into the river or the canals and to indicate the measures taken by them to stop the same.

13. In order to save the aquatic life, as at one point of time, it was reported that large number of fishes were found dead and floating in River Jehlum, we direct the Director, Fisheries Department to submit a report in this regard.

14. The respondents may submit the reports as directed above within a period of one month from today. The reports shall be supplied to the learned amicus curiae, who may file his objections/suggestions, if any, within two weeks thereafter.

15. List on 24th November 2021 along-with connected petitions.