

(2024) 12 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : LPA No. 182/2024

Ram Lal and Ors.

APPELLANT

Vs

The Union Territory of Jammu and Kashmir through its
Commissioner Secretary to the Government of Jammu and
Ors.

RESPONDENT

Date of Decision : 18-12-2024

Acts Referred:

Jammu and Kashmir Brick Kilns (Regulation) Act, 2010 — Section 20
Constitution of India 1950 — Article 226

Citation : (2024) 12 J&K CK 0010

Hon'ble Judges : Sanjeev Kumar, J

Bench : Division Bench

**Advocate : Srishti Pal Mengi, Monika Kohli, M.K.Bhardwaj, J.P.Sharma, Nigam
Bhardwaj, Vir Ranshor, Manik Bhardwaj**

Final Decision : Dismissed

Judgement

JUDGMENTTAG-JUDGMENT

Sanjeev Kumar, J

1. This intra-Court appeal, filed by the appellants with the leave of this Court, is directed against an order and judgment dated 07.08.2024 passed by a learned Single Judge [‘the writ Court’] in WP (C) No. 1840/2023, titled ‘Titru Ram and another vs. UT of Jammu and Kashmir and ors’ whereby the Writ Court has allowed the writ petition filed by respondents No. 4 and 5 herein and quashed the order of the Deputy Commissioner, Reasi, dated 30.05.2022, and the order of the Divisional Commissioner, Jammu, dated 26.05.2024.

2. Before we advert to the grounds of challenge urged by the appellants to assail the impugned judgment, we deem it appropriate to refer to factual background leading to the filing of this appeal.

3. The respondent No.4 claims to be the sole proprietor of respondent No.5, a

brick kiln being run and operated in the name of M/S Bhagwati Brick Kiln Doogi, Tehsil Pouni. This brick kiln was initially established in the year 1997 vide licence No. 983/009 and was later transferred in the name of respondent No.4 in the year 2005. Right from the year 2005 till 31.03.2022, the respondent No.4 has operated the brick kiln in question as proprietor thereof and has not transferred its possession to any third party by any means. The brick kiln licence issued in favour of respondent No.4 has been renewed from time to time without any legal impediments or objections. The licence issued in favour of respondent No.4 has been renewed by the competent Authority after being satisfied that the brick kiln was being operated by respondent No.4 in strict compliance with the applicable norms and regulations. In the year 2020, the appellant No.7, Ravi Kumar filed WP(C) PIL No. 13/2020, seeking, inter alia, quashing of order dated 04.06.2020 by which the brick kiln licence of respondent No.4 had been renewed. The appellant No.7 also prayed for a direction to the official respondents to act according to the mandate of J&K Brick Kilns (Regulation) Act, 2010 ('the Act of 2010' for short) and the rules framed thereunder. Apart from respondent No.4 herein, the official respondents also contested the said Public Interest Litigation.

4. The Division Bench considered the matter in light of the various provisions of the Act of 2010 and the rules framed thereunder, as also the stand taken by the official respondents, and came to the conclusion that the licence granted to respondent No.4 and as renewed from time to time, did not suffer from any illegality that would warrant interference by the Court in the exercise of its discretionary jurisdiction vested under Article 226 of the Constitution. The Division Bench arrived at the aforesaid conclusion after being satisfied that respondent No.4 had completed all the requisite formalities, and, thus, could not be held to be operating the brick kiln illegally. The Division Bench also found that appellant No.7, who claimed to be a noted social worker, was not even involved in any social work and had made bald allegations. In a way, the Division Bench doubted the bona fides of appellant No.7 in raising a public interest dispute with regard to running of the brick kiln in question. While the Division Bench did not find anything wrong or illegal with the licence possessed by respondent No.4, yet left it open to appellant No.7, the petitioner therein, to agitate the matter before the relevant authorities. The appellant No.7 also filed a review petition seeking review of order dated 24.03.2021 passed in WP(C) PIL No. 13/2020, which was dismissed by the Division Bench of this Court vide order dated 17.12.2021.

5 The respondent No.4 herein, after dismissal of WP(C) PIL No. 13/2020 and the review petition, filed an application for renewal of licence before the Deputy Commissioner, Reasi. The said application came up for consideration before the Deputy Commissioner, Reasi who, vide order dated 30.05.2022, dismissed the application of respondent No.4 for renewal of licence and left it open to him to apply for fresh licence under the Act of 2010 and the rules framed thereunder. An appeal under Section 20 of the Act of 2010 was filed before the Divisional Commissioner, Jammu which too was dismissed vide order dated 26.05.2024. Both these orders became subject matter of challenge in WP(C) No. 1840/2023

filed by respondent No.4 which has been allowed by the writ Court vide order and judgment impugned in this appeal.

6. The appellants have challenged the impugned judgment, primarily, on the ground that the writ Court has failed to correctly appreciate that the Division Bench judgment in WP(C) PIL No. 13/2020 did not decide the issue of validity or otherwise of the transfer of licence in favour of respondent No.4 and also that, once the transfer of licence from the original licensee in favour of respondent No.4 was invalid, all subsequent orders of renewal of the licence were equally flawed and unsustainable in law. It was argued by the learned counsel appearing for the appellants that the writ Court also failed to appreciate that there could be no estoppel against a statute, and that the stand taken by the official respondents, if contrary to law, cannot be made the basis for determining the rights of the parties.

7. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the writ Court is well-reasoned and does not call for any interference by us in this appeal.

8. Indisputably, the brick kiln by the name of M/S Bhagwati Brick Kiln Doogi, Tehsil Pouni, was established by one Rattan Lal in the year 1997 under licence No. 983/OQ dated 18.02.1997. The said licence came to be transferred in favour of respondent No.4 in August 2005. From the year 2005 till 2022, when the impugned orders were passed by the Deputy Commissioner, Reasi and the Divisional Commissioner, Jammu, the licence was renewed from time to time without any protest or objection from any quarter.

9. The dispute raised by the appellants in this appeal was initially raised by one of the appellants, namely Ravi Kumar in WP (C) PIL No. 13/2020. The Division Bench of this Court, after considering the entire matter in light of the relevant contentions and the provisions of the Act of 2010 and the rules framed thereunder, held that there was nothing wrong or illegal with the brick kiln licence renewed in favour of respondent No.4. The conclusion was arrived at by the Division Bench after being satisfied that the brick kiln operated by respondent No.4 was fully compliant with the Act of 2010 and the rules framed thereunder. While dismissing the PIL filed by appellant No.7, the Court reserved a right to appellant No. 7 to approach the concerned authorities to raise valid objections against the no-objection certificate issued by the relevant authorities in favour of respondent No. 4. The issue of whether the transfer of the licence from Rattan Lal to respondent No.4 was legally permissible would pale into insignificance as a Division Bench of this Court has held that the brick kiln in possession of, and being operated by respondent No. 4 is legally valid. The Division Bench has taken note of various provisions of the Act of 2010 to come to such conclusions. The Division Bench has also taken note of the fact that the brick kiln licence transferred in favour of respondent No.4 had been continuously renewed from the year 2005 till the year 2022. We are in agreement with the writ Court that it was no longer open to the appellants to again rake up the issue

of validity or otherwise of the transfer of licence which had taken place somewhere in the year 2005. The Deputy Commissioner, Reasi, as well as the Divisional Commissioner, Jammu, in the orders, impugned in the writ petition, have failed to take notice of the fact that the issue which they were seeking to reopen, stood already determined by the judgment of the Division passed in the public interest litigation launched by none other than appellant No.7 herein.

10. True it is that if the authorities concerned find that the brick kiln is operating in violation of any provisions of the Act of 2010 and the rules framed thereunder or that, any no-objection certificate is obtained by respondent No.4 by fraud or misrepresentation, nothing stops such authority or authorities from initiating action in accordance with the law. The power with the competent authority extends to the denial of renewal of the licence on such grounds. However, in view of the judgment passed by the Division Bench in WP(C) PIL No. 13/2020, the competent authority is not entitled to deny renewal on the ground that the transfer of the licence from Rattan Lal to respondent No.4 was not in accordance with law, after having renewed the same for several years.

11. That apart, it is also important to note that the litigation launched by appellant No.7 herein, earlier by way of a public interest litigation and thereafter through the medium of a writ petition, as well as this appeal, is, prima facie, not bona fide. On being pointedly asked by this Court as to whether the appellant No.7, in particular the other appellants have ever objected to the operation of any other brick kiln in their neighborhood or elsewhere, the learned counsel for the appellants responded in the negative. It was also not disputed that there is another brick kiln operating in the same village, to which the appellants have raised no objection.

12. Viewed from any angle, we do not find that the impugned judgment passed by the writ Court is flawed in any manner. This appeal is, therefore, dismissed.