

(2014) 10 J&K CK 0035

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 990/2011, IA No. 1566/2011, Others Writ Petition (OWP) No. 905 Of 2012, IA No. 1541 Of 2012, Others Writ Petition (OWP) No. 614 Of 2009, IA No. 1282 Of 2009 and IA No. 1727 Of 2009

Sheikh-ul-Alam Housing Colony

APPELLANT

Vs

State of JandK and Others

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Citation : (2015) 2 JKJ 111

Hon'ble Judges : Mohammad Yaqoob Mir, J;Hasnain Massodi, J.

Bench : Division Bench

Advocate : Altaf Haqani Advocate, for the Appellant; M.I. Qadiri, Advocate General, N.H. Shah, Dy. AG and G.J. Bala, for the Respondent

Final Decision : Disposed off

Judgement

Hasnain Massodi, J.â?"Controversy in writ petitions on hand relates to construction of a housing colony under name and style of M/s. Sheikh-ul-

Alam Housing Colony at Pampore. Petitioners in OWP No. 614/2009 claim to be office bearers of Falah Behbood Committee, Pampore. They

aver that Committee has been constituted by inhabitants of Tehsil Pampore to work for development of Pampore Town, eradication of social evils

and economic disparities and overall welfare of people of the area. Petitioner in OWP No. 990/2011 is a Cooperative Society, registered under

Section 4. J&K Self Reliant Cooperative Act, 1999. The Society intends to construct a housing colony on 92 Kanals and 01 Maria of land

acquired by it at Estate Namblabal, Pampore, but side local limits of Municipal Committee, Pampore. Petitioners in OWP-No. 614/2009 plead

that land acquired by Sheikh-ul-Alam Housing Colony (for short "Housing Colony") is Abi Awal land used for agricultural purposes and in terms of

Section 133-A, J&K Land Revenue Act, it cannot be converted into residential land. They insist that Housing Colony has no right to convert

agricultural land, acquired by it into residential area and therefore, cannot be allowed to raise proposed construction over land in question. They

are aggrieved that Housing Colony is being allowed to excavate soil and raise construction in violation of law and directions passed from time to

time by concerned authorities including Deputy Commissioner, Pulwama's No. 18-DCP/SQ of 2008 dated 16th April 2008. They claim to have

approached authorities with successive representations for stopping earth excavation and proposed construction, without an adequate response

from authorities except inter se communications between them. Reference in this regard is made to letter No. TP/OQ/139-42 dated 15th April

2009, addressed by Tehsildar, Pampore to Naib Tehsildar, directing him to stop such operations, letter No. DivCom/OSD/Misc/09 dated 11th

July 2009, addressed by OSD with Divisional Commissioner, Kashmir, to Deputy Commissioner, Pulwama, requesting him to examine complaint

regarding conversion of Abi Awal land in violation of Section 133-A, J&K Land Revenue Act, by Housing Colony and Notice dated 1st January

2008, prohibiting conversion of paddy land into residential/commercial land by earth filling.

2. Petitioners are aggrieved with order No. 04 of 2009 dated 22nd June 2009, issued by Vice Chairman, Srinagar Development Authority (SDA),

according sanction in terms of Section 4, J&K Control of Building Operation Act, 1988 (COBOA) read with J&K Control of Building Operation

(Revised) Regulations, 2001, (COBORR) in favour of Housing Colony, permitting it to construct 15 HIG/MIG/LJG category houses at

Namblabal, Pampore. It is pleaded that sanction accorded is without jurisdiction as the Authority lacks power to permit construction on Abi Awal

land.

3. Petitioners, on strength of averments made in petition, seek following relief:

a) Certiorari, quashing order No. 04 of 2009 dated 22.06.2009, passed by respondent No. 6 in favour of respondent No. 7.

b) Mandamus, commanding official respondents to implement order No. 18 DCP-

SQ of 2008 dated 16.4.2008 and order no DIPK-7731 dated

01.01.2008, further commanding respondents to stop forthwith all activities of excavation of soil being operated in the Town Pampore and not to allow respondent No. 7 to fill the 100's of Kanals of Abi Awal land.

c) Mandamus, commanding official respondents not to allow private respondent No. 7 to develop housing colony at Village Bagander/Meh

Pampore District Pulwama.

4. Respondent No. 6 i.e. Srinagar Development Authority, opposes writ petition on the ground that area, where construction has been permitted,

is included in Master Plan 2000-2021 for Srinagar; that in the Master Plan, the site in question is shown as residential area. It is insisted that land

falls within jurisdiction of SDA and that permission granted in favour of Housing Colony is in accordance with law.

5. Writ petition is opposed by respondent No. 7 i.e. Housing Colony on identical grounds. It is insisted that land in question falls within local area

of SDA as declared vide SRO 43 of 1971 dated 2nd February 1971 and that land in Master Plan 2000-2021 is earmarked for residential use. It

is pleaded that land falls within Planning Zone P-3. It is further pleaded that sanction to raise construction was accorded by SDA in accordance

with law and after obtaining a detailed report bearing No. PP/OQ/854-55 dated 26.11.2007 from Tehsildar, Pampore. Respondent No. 7 claims

to have deposited Rs. 99,600/- vide receipt No. 63662 dated 9th March 2009 as fee, with respondent Authority. Building Permission is said to

have been upheld by High Court vide order dated 24th June 2010 whereby OWP No. 637/2010 titled Sheikh-ul-Alam Housing Colony v. State,

was disposed of. Respondent No. 7 also questions bona fides of petitioners in filing writ petition on hand on the grounds that one of the petitioners

i.e. petitioner No. 2 himself, with aid and assistance of other petitioners, sold his landed property on spot to respondent knowing well that land was

to be part of Housing Colony, proposed to be constructed by Housing Colony.

6. Housing Colony in OWP No. 905/2012 complains that respondents in writ petition, without any rhyme and reason are interfering with

construction undertaken by Housing Colony in accordance with permission accorded to it by SDA vide Order No. 04 of 2004 dated 22.06.2009.

It is pleaded that Housing Colony has right to raise construction on proprietary

land purchased by it, more so when it has been authorised by

Building Operation Controlling Authority, having jurisdiction over the area to raise construction. It, on the grounds similar in the grounds urged in

opposition to OWP No. 614/2009, seeks following reliefs:

a) A writ Mandamus, commanding respondents not to take law into their hands and not to cause any interference into the construction raised by

petitioners in accordance with law and without taking any recourse provided by law.

b) A writ of Mandamus, commanding respondents 3 to 5 to ensure protection, preservation and safety of construction and assets of petitioners

located on spot.

7. Respondents 1 to 4 and 7 oppose writ petition on the grounds that land, on which construction is proposed to be raised by Housing Colony, is

recorded as Abi Awal in revenue records. Petitioner is said to have constructed 06 houses and 04 plinths as on 06.06.2013 i.e. the date Reply

was filed and that vide letter No. DCP-SQ/09/536 dated 02.09.2009, Tehsildar, Pampore, was directed to proceed on spot and stop

constructions. It is pleaded that proposed, construction is not permissible under Section 133-A, J&K Land Revenue Act and Section 16,

Alienation of Land Act and that conversion of land cannot be allowed except by the Authority identified under relevant provisions of J&K Land

Revenue Act and Alienation of Land Act. Respondents claim to have removed structures raised by petitioner after notice required under law was

issued to petitioner Housing Colony. Srinagar Development Authority - respondent No. 6, in the petition, has not taken any stand and has avoided

to file any Reply.

8. Petitioner, in his rejoinder, filed on 26th July 2013, has denied that land in question is Abi Awal land. It is pleaded that land has not been used

for agricultural purposes since long and is a water logged area - a source of nuisance to residents of area. It is stated that a number of residential

houses, have come up in vicinity of proposed housing colony. It is pleaded that land in question is situated at Namblabal Pampore between villages

of Bagander and Meej and in terms of Zonal Plan shown in Master Plan of 2000-2021, it falls under Planning Division ""P"" Zone P3, and land use

is identified as residential. It is further pleaded that land is no more recorded as

Abi Awal in revenue records and stands reclassified as Banjri

Jadeed in terms of settlement proceedings conducted in 2009.

9. We have gone through the pleadings as also record placed on record and made available by learned counsel for parties. We have heard learned counsel for parties.

10. Controversy involved in writ petitions on hand raises following questions for determination:

i) Whether Srinagar Development Authority was within its jurisdiction while according permission vide Order No. 04 of 2009 dated 22nd June

2009, in favour of Housing Colony?

ii) In case answer to question No. (i) is affirmative, whether permission granted is in conflict with mandate of Section 133-A, J&K Land Revenue

Act, 1996 Svt (1939 A.D.)?

iii) Whether permission order No. 04 of 2009 dated 22nd June 2009 offends Master Plan 2000-2021 ?

iv) How and to what extent present controversy is impacted by J&K Civil Laws (Special Provisions) Act, 2014?

To find answer to above questions, we are to give closer look to facts and record available on file.

11. The first and foremost question that arises for determination is as to whether proposed site for colony falls within local area of Srinagar

Development Authority. SRO 28 of 2003 dated 30th January 2003 brings 08 villages of Tehsil Pulwama (now Pampore) including Konibal and

Meej within Local Area of Srinagar Development Authority. Housing Colony in question is proposed to be constructed on a plot of land measuring

92 Kanals between villages Bagander/Meej and Bund Road within Estate Namblabal, Pampore. Proposed site, therefore, falls within Local Area

of Srinagar Development Authority. Question may arise as to whether the site of proposed housing colony falls within limits of Municipal

Committee, Pampore The confusion is cleared by a certificate issued by Administrator/Chairman, Municipal Committee, Pampore, bearing No.

MCP/OR/632 dated 09.09.2008, wherein it has been certified that site of proposed Housing Colony is outside limits of Municipal Committee,

Pampore. Communication No. TP/08/59 dated 25.06.2008, has been made by Tehisldar, Pampore, and notice by Administrator/Chairman,

Municipal Committee, Pampore. This clears all doubts about jurisdiction of SDA to deal with Housing Colony application for grant of permission

under Control of Building Operations Act, to raise proposed construction. SDA, therefore, exercised power within its jurisdiction delineated under

COBOA and J&K Development Act. It is pertinent to point out that in terms Section 3, COBOA, read with Regulation 3, COBORR, and SRO

289 of 1999 dated 21.7.1999, the Authority, to deal with and take decision on an application for grant of permission to raise construction within

limits of Local Area under jurisdiction of Development Authority, is headed by Vice Chairman of Development Authority with Chief Development

Planner and others as its members.

12. Reckless, unregulated and ever increasing conversion of agricultural land for non-agricultural purposes has of late assumed monstrous

proportions. With every passing day, we find agricultural land around villages, hamlets and habitation, being eaten up by new constructions. With

increasing level of prosperity, a tendency is developing to have independent houses with spacious premises. Instead of going vertical almost all

townships are spreading horizontally. Law makers, to thwart the haphazard and unregulated growth of villages and towns and save agricultural land

from being claimed by new residential colonies, have introduced Section 133-A, J&K Land Revenue Act, 1996 (1939 A.D.) by Act XVI of

1973 and Act IX of 1987. It reads as under:

133-A. No land which grows or has been growing shali crop, vegetables, or saffron lullis shall be used for any purpose other than agricultural

purpose, without permission in writing of the Revenue Minister.

13. A bare look at Section 133-A, J&K Land Revenue Act, would make it clear that a ban has been placed on conversion of agricultural land for

non-agricultural purposes, which would include residential purpose, except with permission in writing of Revenue Minister. In present case,

documents available on record including documents relied upon by Housing Colony, would reveal that site of proposed colony is agricultural land.

It is recorded as ""Abi Awal"" in revenue records. Housing colony, therefore, was required to seek permission from Revenue Minister before

planning residential colony at proposed site. This does not appear to have been done by Housing Colony. Building Operation Controlling Authority

(Vice Chairman, SDA) was expected to be alive to this aspect of the case and grant permission to raise construction and sanction proposed

building plan only after Housing Colony would obtain permission from Revenue Minister under Section 133-A, J&K Land Revenue Act. The

requirement has been totally ignored by Vice Chairman, SDA. The then Vice Chairman, SDA -author of order No. 04 of 2009 dated 22nd June

2014, had before him revenue record of proposed site. Had he perused record, it would have dawned on him that land in question was recorded

as Abi Awal in revenue record and Section 133-A J&K Land Revenue Act, was attracted. A man of ordinary prudence would without much

effort notice non-compliance with mandate of Section 133-A J&K Land Revenue Act and ask for its compliance before application for grant of

permission at the proposed site, was accorded. Order No. 04 to 20 of dated 22nd June 2014 (Annexure P-3 to OWP No. 905/2012), whereby

Housing Colony has been permitted to raise 15 HIG/MIG/LIG category houses at proposed site, does not even mention survey numbers of the

land, on which construction was permitted and Estate in which land was situated. Permission order, therefore, has been issued in disregard of

Section 133-A, J&K Land Revenue Act.

14. Plea that as land is in the shape of ""Numbal"" and has not been growing shalli crop, vegetables, saffron tallies and therefore Section 133-A,

J&K Land Revenue Act, is not attracted, would only help Housing Colony to escape mandate of Section 133-A, J&K Land Revenue Act it is duly

reflected in revenue record. Revenue record made available to Vice Chairman SDA, recorded land in question as Abi Awal. What is relevant for

the purpose of present controversy is record made available to Vice-Chairman SDA immediately before 22nd June 2009. Such record

indisputably recorded and as 'Abi Awal'. Same may not be true about latest settlement. The land, according to Housing Colony, has been declared

as ""Banjri Jadeed"". There may be substance in the stand of Housing Colony that a number of resident houses have been constructed around site of

proposed residential colony and area is on spot a residential area. However, as long as situation on ground does not get reflected in revenue

record made available to Building Operation Controlling Authority (BOCA) at the time consideration is accorded to application for grant of

permission to raise construction, Authority is to consider revenue record and proceed in the matter on basis of revenue record duly attested by competent authority.

15. Master Plan 2000-2021 approved by competent authority and notified vide SRO 28 of 2003 dated 30th January 2003 indicates ""predominant land use"" of different zones of the area brought under Master Plan The site of proposed housing colony, as admitted by parties falls within Planning Division ""P"" and ""predominant land"" use is shown for the area ""P-5"" as ""Saffron"" cultivation. No Objection Certificate (NOC) granted by Assistant Town Planner, Town Planning Organisation, Kashmir (Annexure P-2 to OWP No. 905/2012) and Assistant Commissioner, Nazool, to proposed residential colony, are, therefore, factually incorrect and do not reflect true position in light of Annexure - 5 to Master Plan 2000-2021 titled Description of Zones and Predominant Land Use"".

16. Learned counsel for Housing Colony, while insisting that predominant land use for site of proposed residential colony is ""residential erroneously refers to Planning Division (P-3) that refers to Sempora, Balhama and not Konibal - habitations a few kilometres away from proposed site. Order No. 04 of 2009 dated 22nd June 2009 has been, therefore, issued in disregard of Master Plan 2000-2021.

17. Plea, that land around and in vicinity of site for proposed housing colony has been brought under construction and site in question is almost part of residential area and therefore, actual land use is residential and non-saffron, is of no help to Housing Colony, unless and until position on ground is reflected in Annexure - 5 to Master Plan, titled ""Description of Zones and Predominant Land Use"". The permission granted to Housing Colony to construct 15 HIG/MIG/LIG category houses, has been, in the circumstances, accorded in violation of Master Plan 2000-2021.

18. In the present case Housing Colony has obtained ""No Objection Certificate"" from all departments required to be approached/consulted before BOCA grants permission for raising proposed construction. Housing Colony must have incurred huge expenditure on preparation of plans and layouts for proposed colony and connected paperwork. This apart, there have been some important developments, subsequent to filing of petitions. State Legislature has enacted J&K Civil Laws (Special Provisions) Act

2014, whereunder constructions raised without permission, in violation of permission or Master Plan 2000-2021, are protected till 31st March 2015 or till Government comes up with a policy regarding such construction. Current Master Plan is proposed to be revised to make it realistic and reflect position on ground. In the said background quashment of Order No. 04 of 2009 dated 22nd June 2009, though one of options available, may not be resorted to and instead permission kept in abeyance and Housing Colony restrained from further constructions, so that in the event with the change in Policy, for Housing Colony it is permissible to raise proposed construction, permission other-wise valid except in conflict with Section 133-A, J&K Land Revenue Act and Master Plan 2000-2021, gets review.

19. Petitioner in OWP No. 905/2012, as per available record, has already constructed few houses and construction of other houses is in progress

Master Plan 2000-2021 has been violated with impunity in almost all major and minor towns of State. There has been large scale violation in

Srinagar Jammu, Katra and other towns. The actual land use on ground in case of large number of commercial complexes, residential colonies and

other constructions does not correspond to land use prescribed in Master Plan 2000-2021 The matter surfaced in PIL No. 05/2013 titled Mujeeb

Andrabi v. State of J&K and others. In the event provisions of COBOA 1988 Regulations made thereunder, Development Act and Master Plan

2000-2021, were strictly enforced. Such constructions were to be demolished State Legislature, because of large scale demolition of commercial

and residential complexes in the event building laws are adhered to, has enacted J&K Civil Laws (Special Provisions) Act 2014 (hereinafter ""Act

of 2014""). The Act of 2014, as a bare look would reveal, prohibits any ""punitive action"" by a ""local authority"" against unauthorised construction

raised or erected in contravention of sanctioned plan or without a sanctioned plan or in violation of Master Plan 2000-2021. The ""punitive action

as defined under Section 2(f) includes sealing of premises, demolition of the building or structure. The prohibition under Section 4 of the Act of

2014 on ""punitive action"" against unauthorised construction is to remain operational till 31st March 2015 or till a policy is formulated in terms of

Section 3 of the Act to deal with or regulate unauthorised constructions raised in

local areas to which the Act of 2014 applies, whichever is earlier.

In terms of Section 5, the Act is not to apply to buildings or structures, not completed on 5th March 2014, currently under construction or

construction whereof is undertaken after 5th March 2014. The Act is also not to apply to buildings or structures constructed even before 5th

March 2014 but on public land, public road or any other public utility and to buildings and structures not complying with safety standards as

directed by Government,.

20. The Act of 2014 impacts controversy in hand inasmuch as official respondents are disabled to resort to any ""punitive action"" i.e. sealing or

demolishing, against construction raised by Housing Colony before 5th March 2014, till 31st March 2015 or a policy is formulated in terms of

Section 3 of the Act of 2014, to deal with or illegal/unauthorised constructions including such constructions raised by Housing Colony, whichever is

earlier. Housing Colony, however, cannot proceed with further constructions till such policy is formulated and in revised Master Plan, land use for

Planning Division ""P-5"", changed from ""Saffron"" to ""residential"" or till Housing Colony succeeds in either getting permission to convert proposed

site to non-agricultural use or nature of the land in question changed from ""Abi Awal"" to ""Banjri Jadeed/Abadi"" in revenue record.

21. For reasons discussed, writ petitions are disposed of as under:

i) Order No. 04of2009 dated 22nd June 2009, whereby Sheikh-ul-Alam Housing Colony, has been permitted to construct 15 Houses of

HIG/MIG/LIG category over the land measuring 92 Kanals and 01 Marlas comprising Survey Nos. 87-Min, 185-Min, 130-Min, 145-Min. 153-

Min, 157-Min, 159-Min, 161-Min, 162-Min, 164-Min, 167-Min, 170-Min, 172-Min, 178-Min, 176-Min, 177-Min, 179-Min, 182-Min, 10/83-

Min, 185-Min, 186-Min, 187-Min, 188-Min, 193-Min, 200""Min, 201-Min, 205-Min, 206-Min, 207-Min, 208-Min, 209-Min, 286-Min, 245-

Min, 247-Min, 270-Min, 272-Min, 273-Min, 274-Min, 293-Min, 300-Min, 306-Min and 574-Min, having been passed in violation of Section

133-A, J&K Land Revenue Act, Master Plan 2000-2021 notified vide SRO 28 of 2003 dated 30th January 2003, shall remain in abeyance till

51st March 2015 or till policy in terms of Section 3, J&K Civil Laws (Special Provisions) Act, 2014, is framed by the Government, whereafter

fate of the order shall be regulated by the policy so framed.

ii) Respondents in OWP Nos. 990/2011 and 905/2012, by way of writ of Mandamus, are commanded not to seal, demolish or other-wise

interfere with residential houses constructed by Sheikh-ul-Alam Housing Colony before 5th March 2014, on land measuring 92 Kanals and 01

Marlas comprising Survey Nos. 87-Min, 135-Min, 139-Min, 145-Min, 153-Min, 157-Min, 159-Min, 161-Min, 162-Min, 164-Min, 167-Min,

170-Min, 172-Min, 173-Min, 176-Min, 177-Min, 179-Min, 182-Min, 19/83-Min, 185-Min; 186-Min, 187-Min, 188-Min, 193-Min, 200-Min,

201-Min, 205-Min, 206-Min, 207-Min, 208-Min, 209-Min, 236-Min, 245-Min, 247-Min, 270-Min, 272-Min, 273-Min, 274-Min, 293-Min,

300-Min, 306-Min and 574-Min, till 31st March 2015 or till policy is framed in terms of Section 3, J&K Civil Laws (Special Provisions) Act,

2014, whichever is earlier. Action, if any, warranted under law against construction already raised as on 5th March 2014 shall be regulated by

policy so framed.

iii) Promoters of Housing Colony would be free to project their stand before Authority required to frame policy in terms of Section 3, J&K Civil

Laws (Special Provisions) Act, 2014, that actual land use of area where Sheikh-ul-Alam Housing Colony is proposed to be raised is residential

and deserves to be so reflected in proposed policy or to approach revenue authorities for change in nature of land from Abi Awal to Banjari

Jadeed/Abadi in record or in alternative seek necessary permission in terms of Section 133-A, J&K Land Revenue Act, from competent authority,

to put land to non-agricultural use.

iv) In the event Policy framed under Section 3, J&K Civil Laws (Special Provisions) Act, 2014, changes land use of the area, where residential

colony is proposed to be constructed from ""Saffron"" to ""Residential"" or revenue authorities change its nature from Abi Awal to Banjari

Jadeed/Abadi or competent authority grants permission for conversion of land in question to non-agricultural use, promoters of the Housing

Colony would be free to continue with construction in strict accordance with Order No. 04 of 2009 dated 22nd June 2009.

Disposed of.