

(2018) 08 J&K CK 0047

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No..1513 Of 2018

Sonam Yangdol And Others @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 16-08-2018

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2018) 08 J&K CK 0047

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

1. In both writ petitions are impugned Final Notices, bearing no.SDM-D-07(C)2017 dated 18th April 2018, issued by Sub Divisional Magistrate,

Durbuk, Leh (respondent no.8 herein), by virtue whereof, final and last opportunity has been afforded to camp owners to remove their structures

within seven days of publication of the notice or else all structures would be demolished and dismantled and the material would be confiscated at the

risk and cost of owners.Â

2. Kick-off submission of learned counsel for petitioners, to bolster the case set up by petitioners in present writ petitions, is that a Coordinate Bench

of this Court in concomitant writ petition, being OWP no.787/2018, has passed an ad interim order on 10th May 2018 (p.12 to OWP no.1513/2018),

keeping in abeyance impugned notice dated 18th April 2018.Â He also invites attention of this Court to Order dated 7th July 2018 (pp. 13, 14 to

OWP no.1513/2018), passed by a Coordinate Bench of this Court in OWP no.1217/2018 titled Sonam Gyurmet v. State of J&K and others, by which

Sub Divisional Magistrate, Durbuk, Leh, has been directed to consider and decide the representation submitted by writ petitioner by a speaking order

after affording opportunity of being heard to writ petitioner and till said representation is decided, no action for his dispossession shall be taken. After saying so, learned counsel exhorts disposal of both writ petitions on same lines of OWP no.1217/2018 as according to him in the present case as well, petitioners have moved representation to respondents.Â

3. On the other hand, learned counsel for respondents states that though the report qua subject matter of the case has been received, yet he could not prepare the reply due to paucity of time. The Final Report prepared by respondent no.5, at request is taken on record.

4. Writ petitions, in view of case set up together with submissions made by learned counsel for parties, are disposed of with a direction to Sub

Divisional Magistrate, Durbuk, Leh (respondent no.8), to consider and decide the representation(s) claimed to have been made by petitioners by

issuing a speaking order. Till such representation is decided, status quo be maintained.Â

5. However, before parting with the case in hand, it is apropos to mention here that the lakes are an important feature of the Earth's landscape.

They are extremely valuable ecosystems and provide a range of goods and services to humankind. They are not only a significant source of precious

water, but extend valuable habitats to plants and animals, moderate the hydrological extreme events " drought and floods, influence microclimate,

enhance the aesthetic beauty of the landscape and offer many recreational opportunities.Â Many of our rivers arise from the lakes at higher altitudes

in the Himalayan ranges. Qua Pangong Lake, also known as Pangong Tso, is a beautiful endorheic lake situated in the Himalayas, which falls within

Changthang Cold Desert Wildlife Sanctuary. Pangong Lake is one of the biggest tourist attractions of the country. The beauty and allure of this lake

attracts people from all over the country and beyond. Having said that, Pangong Lake requires preservation and conservation from being

contaminated and polluted under the guise of developmental works, construction and erection of structures around the lake.Â

6. Perusal of report, produced by learned counsel for respondents, reveals that a slew of camps/restaurants/ structures has been set up illegally and

are being operated along bank of Pangong Lake without any permission, generating constantly all type effluences and contaminants and as a

consequence whereof posing serious threat to the very existence of the Pangong Lake, besides snuffing out ecologically fragile region as also

wildlife.Â

7. Notices under J&K Wildlife Protection Act, as is discernible from the report produced by learned counsel for respondents, have been served upon

encroachers. Though make-believe steps on paper have been taken, yet no substantial and significant result spring therefrom. It also comes to fore

that establishment of restaurants/hotels/guest houses/home stays/ camps/ resorts is on spree in District Leh, depleting ground water level because

innumerable borewells and handpumps are at galore.Â

8. Right to life includes right to decent environment. Right to clean environment is a guaranteed fundamental right. Proper and healthy environment

enables people to enjoy quality life which is the essence of the right guaranteed under Article 21. The State and citizens are under a fundamental

obligation to protect and improve environment, including forests, lakes, rivers, wildlife and to have a compassion for living creatures. Right to have

living congenial to human existence is a right to life. The State has a duty in that behalf and to shed its extravagant unbridled sovereign power and to

forge in its policy to maintain ecological balance and hygienic environment. Though the Government has power to give directions that power should be

used only to effectuate and further the goals of the approved scheme, zonal plans etcetera, the hazard to health and environment of not only the

persons residing in the illegal colonisation area but of the entire town as well as the provision and scheme of the relevant Act had to be taken into

consideration. The most vital necessities, namely, air, water and soil, having regard to right to life under Article 21, cannot be permitted to be misused

and polluted so as to reduce the quality of life of others. The risk of harm to the environment or to human health is to be decided in public interest,

according to a reasonable person's test. Life, public health and ecology have priority over unemployment and loss of revenue. Development and

protection of environment are not enemies. The natural sources of air, water and soil cannot be utilised if the utilisation results in irreversible damage

to environment. There has been accelerated degradation of the environment primarily on account of lack of effective enforcement of environmental

laws and non-compliance with the statutory norms. [See: Intellectual Forum v.

State of A.P. (2006) 3 SCC 549; Karnataka Industrial Areas Development Board v. C. Kenchappa (2006) 6 SCC 371; Susetha v. State of T.N. (2006) 6 SCC 543; T.N.Godavarman Thirumulpad v. Union of India (2006) 1 SCC 1; Bombay Dyeing & Mfg. Co. Ltd v. Bombay Environment Action Group (2006) 3 SCC 434; Shantistar v. Narayan AIR 1990 SC 630; N.D.Jayal v. Union of India (2004) 9 SCC 362; A.P. Pollution Control Board v. Prof. M.V. Nayudu (1999) 2 SCC 718; M. C. Mehta v. Kamal Nath (2000) 6 SCC 213; Hinch Lal Tiwari v. Kamla Devi (2001) 6 SCC 496; Buffalo Traders Welfare Assn. v. U.O.I. (2004) 11 SCC 333; M.C.Mehta v. Union of India (2004) 6 SCC 588].

9. In view of above discourse, District Administration of Leh is directed to take well planned, sustainable and scientific efforts and steps to prevent degradation, or say ultimate death, of Pangong Lake. And for this purpose, District Administration will remove all structures around the Pangong Lake, including take up the matter with the authorities of Army to shift the structure(s) erected by Army, around the lake to any other place/area where it is found appropriate having regard to security scenario and given preservation of Lake as well. Not only this, a scheme/ policy is also important to be formulated by the State Government, if not already formulated, for preservation and conservation of Pangong Lake.Â District Administration of Leh shall also endeavour to save, protect and preserve the flora and fauna in and around Lake. Insofar as borewells and handpumps are concerned, District Administration shall seal all borewells and handpumps, which are operating illegally, unauthorizedly and without permission from the authority.Â

10. It may not be out of place to mention here that India is largest groundwater user in the world, with an estimated usage of around 230 cubic kilo meters per year, more than a quarter of the global total usage. In view of more than 60 percent of irrigated agriculture and 85 percent of drinking water supplies dependent on it, groundwater is a vital resource for rural areas in India. Reliance of urban and industrial water supplies on groundwater is also becoming increasingly significant in India. Through the construction of millions of private wells, there has been a phenomenal growth in the exploitation of groundwater in the last five decades. This era of seemingly endless reliance on groundwater for both drinking water and

irrigation purposes is now approaching its limit as an increasing number of aquifers reach unsustainable level of exploitation and a 2004 nationwide assessment found 29 percent of groundwater blocks to be in the semi-critical, critical or over-exploited categories, with the situation deteriorating rapidly. The potential social and economic consequences of continued weak or non-existent ground water management are serious, as aquifer depletion is concentrated in many of the most populated and economically productive areas. The implications are disturbing for attainment of millennium development goals, for sustaining economic growth and local livelihoods and for environmental and fiscal sustainability. The consequences will be most severe for the poor. Furthermore, climate change will put additional stress on groundwater resources, while at the same time will have an unpredictable impact on groundwater recharge and availability. [Vide World Bank Report "Deep Wells and Prudence, 2010].

11. Ladakh Region, it is germane to mention here, does not have rain water harvesting system and as a sequel whereof, groundwater level in Ladakh Region is depleting day by day. Consequently, it is bounden duty and responsibility of District Administration, Leh, that groundwater resources (aquifers) are protected from such activities that impact the equity of access and sustainability of the resource. All the precautionary measures and steps shall be taken by the District Administration, Leh, at all levels to protect groundwater from depletion, deterioration, biological and chemical pollution as well as to prevent and/or reduce adverse impacts on the environment. Effective schemes and measures are to be formulated and implemented to conserve, replenish, recharge and manage groundwater in an equitable and sustainable manner. Any use of groundwater, surface water or land and forest resources or activity in relation to these resources, which are likely to have significant negative impacts on natural sources as also to local sources of groundwater shall be sternly prevented and all protective, preventive and precautionary measures in this regard shall be set in motion by District Administration of Leh. This apart, Public Health Engineering, Leh, shall ensure that potable water is provided to the colonies/habitations, in discharge of their public obligation and while doing so it shall inhibit illegal extraction of groundwater.

12. Disposed of.

13. Registry to forward copy of this Order to Chief Secretary, J&K, Deputy Commissioner, Leh, and Executive Engineer, PHE, Leh.