

(2015) 10 J&K CK 0017
In the Jammu And Kashmir High Court
Case No : OWP (PIL) No. 159 of 2002

Syed Tahir Geelani

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Citation : (2016) 2 JKJ 6

Hon'ble Judges : Mr. N. Paul Vasanthakumar, CJ. and Mr. Hasnain Massodi, J.

Bench : Division Bench

Advocate : Mr. Jahangir Iqbal, AG, with Mr. Sajad Ahmad Mir, AAG Court Vigilance Commissioners Present in Person, for the Respondents; Mr. Z.A. Shah, Amicus Curaie with Mr. Asif Maqbool, Advocate, for the Appellants/Petitioners

Final Decision : Disposed Off

Judgement

Mr. Hasnain Massodi, J. - Fresh status report submitted by learned Advocate General would indicate that important steps have been taken by

respondents to make Dole Demb project a reality. The project involving shifting of the House Boats from the present location to Dole Demb area

stands approved by Planning and Development Department as also Finance Department and is to be shortly placed before the Cabinet for final

approval, where after steps are to be taken for implementation of project on ground, Cabinet memo in this regard, stands prepared on

08.10.2015. Let the matter be placed before the Cabinet in its next meeting so that final approval is accorded before the adjourned date and

compliance reported accordingly.

2. We hope that first batch of 76 houseboats as stated on 24th September 2014, would be shifted to Dole Demb area as per schedule fixed.

Respondent Authority on 24th September 2014, was directed to notify in

advance proposed phase-wise schedule of shifting of Houseboats to

Dole Demb area with sufficient details, so that Houseboat owners may be made aware of schedule well in advance, enabling them to organize their

affairs accordingly. The advance publication of schedule would also rule out any last minute objection or impediment in timely implementation of

scheduled programme. Let shifting schedule with particulars of houseboats to be shifted be published in a local daily, immediately after the project

finds approval of the Cabinet.

3. Compliance report filed by Inspector General of Police, Kashmir indicates that police force available to Lakes and Water Ways Development

Authority (LAWDA) has been strengthened by deploying 15 police personnel to the Authority, taking strength of force to 25 personnel. This

redresses the grievance that because of non deployment of sufficient police force, enforcement Wing of LAWDA is not in a position to discharge

its statutory obligation. In addition to deployment of additional police force, a Motorboat has been attached with Dy. S.P. Enforcement Wing of

LAWDA, to help it intensify patrolling of lake area and check unauthorized encroachments etc.

4. A proposal to install CCTV Cameras at appropriate places, around the Dal Lake area, so as to check the transportation of unauthorized

building material is reported to under consideration of Police Department. We hope that a decision in this regard would be taken well before next

date of hearing and effort made to install CCTV Cameras at identified places.

5. The report in para 10 makes valuable suggestions for prevention of encroachment and unauthorized constructions. We accordingly direct the

Authority, empowered to grant permission for carriage of building material to Lake area, to specify nature and quality of building material,

proposed to be transported and as far as possible avoid granting such permission for a period exceeding one day. Permission for a period of more

than one day is to leave room for its misuse. The permission should indicate the point from which entry is proposed to be made to Lake area, the

destination of the building material proposed to be transported, particulars of permission granted by Building Operations Controlling Authority

(LAWDA), e.g. permission number, Date etc. so that end use of building material is verified. The permission should be preferably for one trip so

that it is not misused and quantity of building material transported much more than covered under the permission.

6. The respondent Authority (LAWDA), in the event, unauthorized construction is for any reason demolished, shall take immediate steps to

remove the construction material from the spot so that it is not reused for reconstruction or raising any other construction. The Authority shall also

take steps to identify 200 meters around the lake area by installing identifying marks like signboards, cement/iron polls so that general public is

made aware of extent of No Construction Zone, around the Lake area and possibility of any violation is ruled out.

7. The status report filed by IGP, Kashmir does not indicate whether police check-points have been established at all entry points to prevent

transportation of building material to the Lake area. Let such check-posts be set up within one week and compliance reported by next date of

hearing.

8. The latest report submitted by Court Vigilance Commissioners is shocking, to say the least. The report identifies the constructions, un-

authorisedly raised in recent past in violation of Master Plan, permission granted by BOCA as also directions passed by this Court from time to

time as under:-

i. Hut constructed at Bahraar, Nigeen lake by Sh. Rouf Ahmad Shungloo R/O Nigeen, owner of HB New Mavis.

ii. Concrete double storied guest house comprising of 8 rooms, kitchen and bathroom on the bank of lake.

iii. Construction of a restaurant on island named as 'Mac's Island' and ""Nigeen View Resort"" at Nigeen lake.

iv. Construction of a wooden structure to serve as dining hall to his Houseboat ""Floating Heaven House Boat"" by Ah. Rashid Doonu S/o

Mohammad Iqbal R/O Nigeen Construction of a tin shed and concrete structure at upper compound of shrine near Nehru Park, in violation of

permission.

v. Construction of a commercial complex by Mohammad Tariq Reshi S/O Ghulam Mohammad Reshi R/O Ishber Nishat, with the plinth area of

more than 7000.00 Sq.fts. in violation of permission order no. 62 Bldg/LDA of 2012, dated 28.08.2012, whereby Mr. Reshi was permitted to

construct a residential with plinth area of 1425.00 sq.fts. The violation also involves hundred percent increase in height of building.

vi. Construction of a double storied structure of 250x100 at Harwan/Barji by Directorate of Indian System of Medicine (AYUSH) on the bank of Dachgam.

9 The copy of report submitted by Court Vigilance Commissioners on 13th Oct. 2015, was furnished to learned Advocate General as well as

learned amicus curie for their response. Learned Advocate General as well as Mr. Shah, amicus have confirmed the violations reported by Court

Commissioners. Mr. Shah has even submitted 14 photographs' depicting the violations, reported in the Report.

10. We in the said background direct respondent Authority (LAWDA) to attach all the above mentioned structures/ buildings raised in violation of

Master Plan, directions of this Court, or beyond the permission, if any granted by BOCA (LAWDA) and there after initiate action qua such

constructions as warranted under rules. Let compliance be reported by next date of hearing. Superintendent of Police (Srinagar East) and SHO's

of all concerned police stations, shall extend cooperation to the Authority to ensure forthwith implementation of the directions.

11. It is further reported that Ghat at Nawa Bagh has been un-authorisedly converted into parking place by earth filling and Houseboat ""New

Jaaklin"" illegally moored at the place. Let LAWDA takes necessary steps to restore the Ghat to its original position and remove the houseboat so

that it is used by general public without any hindrance.

12. Learned amicus curiae points out that Court Vigilance Commissioners are not being provided transport facility, enabling them to discharge their

mandate and that their monthly fee remains to be paid to them. Vice Chairman LAWDA shall make a requisition for allotment of vehicle to

Director Motor Garages. On receipt of such requisition Director Motor Garages shall allot a vehicle to the Commissioners. Fuel consumed in

connection with tour/inspection of the Lake area and discharge of duties assigned shall be provided by the Authority.

13. Let SSP, authorised to grant permission for carriage; of building material to the Lake area provide copies of permission orders, to

Commissioners so that on a test check basis they visit the destination of such

material to find out whether it is used for intended purpose and also whether the construction raised is authorised by BOCA(LAWDA). Let fresh report be filed in accordance with order whereby Court

Commissioners have been appointed.

14. Copy of order be provided to Learned Advocate General as also Learned amicus and Court Vigilance Commissioners, enabling them to file

fresh compliance well before next date of hearing with advance copy to counsel for other side.

15. List on 27.10.2015.