

(2008) 03 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : OWP No.514 Of 2007, CMP No. 150 Of 2008, CMP No.762 Of 2007

Ved Prakash

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Citation : (2009) 1 JKJ 527

Hon'ble Judges : J.P.Singh, J

Bench : Single Bench

Advocate : A.H.Qazi, V.K.Magoo, S.S.Ahmad, R.Koul, Pranav Kohli, Advocates
appearing for the Parties

Judgement

1. Petitioner has filed this writ petition seeking issuance of a writ of mandamus commanding respondent Nos. 1, 2, 4 and 5 to demolish Indian Oil

Corporations illegal construction work of Petrol Pump proposed to be set up over land measuring two kanals comprised in Survey Nos. 34 & 35,

situated at Thudi, Tehsil and District Rajouri.

2. Petitioner seeks the issuance of directions against the respondents on the ground that construction of Petrol Pump in the area by the Corporation

was in contravention of the provisions of the Prevention of Ribbon Development Act, 2007 (1950 A. D.) and the Municipal Laws. It is pleaded by

the petitioner that hazardous storage of highly inflammable petroleum products within the residential area would endanger the life of the persons

residing in the area.

3. To support his case, the petitioner has annexed copy of the notification issued by the competent authority under the Prevention of Ribbon

Development Act, 2007 (1950 A.D.), in terms whereof proposed distance for

construction of Petrol Pumps from centre line of SunderbaniPoonch

Road, is prescribed as 100 feet. According to the petitioner, the site at which the Petrol Pump was being constructed was within the prohibited

prescribed distance.

4. In response to the writ petition, the Indian Oil Corporation says that petitioner's writ petition is misconceived as it does not project violation of

any individual right of the petitioner and is in the nature of a Public Interest Litigation which cannot be maintained as such. According to the

Corporation, the Government of India through Ministry of Petroleum and Natural Gas had Formulated a policy for upliftment of people belonging

to Backward Classes/Reserved Category, and under this Scheme the Corporation had to provide a Retail Outlet, free of cost, to the persons

belonging to such castes, with all infrastructure to be provided by the Corporation. Respondent No.6 had been selected for the purpose and after

proper verification/inspection, the land in question had been selected for raising the construction of a Retail Outlet for respondent No.6. The

Corporation had initiated process for construction of Retail Outlet after obtaining requisite permission from Municipal Authorities, No objection

from Deputy Commissioner, Rajouri, and Licence No. P/NC/JK/14/543(P155955) from Joint Chief Controller of Explosives.

5. According to the Corporation the provisions of the Prevention of Ribbon Development Act, 2007 (1950 A. D.) were not applicable in the area

where the Petrol Pump had to be set up, because the road passing through the area had not been notified as such under the Prevention of Ribbon

Development Act, 2007 (1950 A.D.) and the road regarding which the restriction for raising construction had been notified under the Act was

SunderbaniPoonch Road and not RajouriKalakote road. Objections filed by respondent Nos. 1 & 2 indicate that the proposed Retail Outlet was

being constructed on the edge of RajouriKalakote road situated within Rajouri Municipality and the restriction of not raising construction within

100 feet distance prescribed in the notification under the Prevention of Ribbon Development Act, 2007 (1950 A. D.), relied upon by the

petitioner, was not applicable to the location in question. According to them, the proposed site of Petrol Pump which was at a distance of 30 feet

away from the centre line of the road was being shifted to 85 feet from the

centre line of the road.

6. Case set up by respondent No.6 in opposing the writ petition is that the petitioner had filed the writ petition to stall the setting up of retail outlet

of petroleum products with malafide intentions, in that, he had himself offered his own land situated in the vicinity of the land in question, comprised

in Khasra Nos.35 and 35/1 situated at Ward no.6 Thudi, Rajouri, to the Corporation, for setting up of Retail Outlet and on the refusal of the

Corporation to take his land, he had resorted to unnecessary litigation to somehow or the other thwart the process of setting up of the Petrol

Pump. Communication addressed by the petitioner to Senior Divisional Retail Sales Manager, Indian Oil Corporation, Jammu, making his financial

and technical bid for offering his land, and communication addressed by him to Tehsildar Rajouri, seeking issuance, of NonEncumbrance

Certificate in respect of land comprised in Khasra Nos.35 & 35/1, situated at Thudi, Rajouri, have been placed on records by the respondent to

demonstrate that the writ petition was malafide and the petitioner had not approached the Court with clean hands.

7. According to respondent No. 6, the location where the Petrol Pump had to be set up did not fall alongside the notified road of

SunderbaniPoonch road and was, on the other hand, on a link road to which the provisions of Prevention of Ribbon Development Act 2007

(1950 A. D.) had no application. Respondent no.6 has stated that all concerned authorities had inspected the location and finding that the

construction was not in violation of any of the laws in force in the State, had issued their no objection certificates.

8. I have heard learned counsel for the parties and gone through their pleadings.

9. Petitioner has not projected violation of any of his right in the writ petition. All that he says in the petition, is that the respondent authorities under

the Prevention of Ribbon Development Act 2007 (1950 A.D.) had failed to discharge their statutory functions and in that view of the matter a

direction was required to be issued to demolish the construction of proposed retail outlet of petroleum products. The petitioner had sought this

relief on the ground that the location of the proposed Retail Outlet would violate the provisions of Prevention of Ribbon Development Act 2007

(1950 A.D.) which prohibits raising of buildings, within a distance of 100 feet

from the centre line of SunderbaniPoonch road.

10. During the course of discussion, land in view of the documents placed on records by the respondents, learned counsel for the petitioner Mr.

Kohli, could not substantiate that the proposed location of construction was on SunderbaniPoonch road. He had candidly accepted that the

location of construction was on a linkroad known as RajouriKalakote road.

11. From the documents placed on records, I am satisfied that the present location where the construction of proposed Retail Outlet had been

planned by the Indian Oil Corporation Limited was not alongside SunderbaniPoonch road, it on the other hand, has been found to be on

RajouriKalakote road which has not been notified under the Prevention of Ribbon Development Act 2007 (1950 A.D).

12. The very basis on which the petitioner had come to this Court seeking command against the respondentauthorities to demolish the construction,

thus fails.

13. From the documents placed on records, it is apparent that the petitioner had offered his bid to the Corporation for taking his land on lease for

giving it to the selected candidate under the Scheme, but his bid does not appear to have been accepted. Having failed to succeed in providing his

land to the Corporation for setting up a Petrol Pump near the same area where it is being presently set up, the petitioner has resorted to the present

unnecessary litigation. He had obtained an injunctive direction too on, the basis of his writ petition in September 2007.

14. Jurisdiction under Section 103 of Constitution of Jammu and Kashmir and Article 226 of the Constitution of India may be invoked for

protection of fundamental, legal or statutory rights. Petitioner has not projected violation of any of such rights in his writ petition. The very basis on

which he had approached this Court to seek directions against the respondentauthorities too is found to be factually incorrect. Official documents

placed on records demonstrate that the petitioner had not come to this Court with clean hands and he appears to have filed the writ petition to stall

the setting up of Retail Outlet of petroleum products by the Corporation when the Corporation had refused to oblige him to take his land for setting

up a Retail Outlet.

15. Petitioners writ petition is, therefore, found to be utterly misconceived. It is,

accordingly, dismissed with costs, quantified at Rs.5000/. Interim order issued by this Court on 27.09.2007 shall accordingly stand vacated.