

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

OWP No.412/2018

**INHABITANTS OF MOHALLA HAJIBAGH,
VILLAGE GUND KARIM KHAN ...PETITIONER(S)**

Through: Mr. Gulzar Ahmad Bhat, Advocate.

Vs.

STATE OF J&K AND OTHERS ...RESPONDENT(S)

Through: Mr. Allau-ud-din Ganai, AAG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

**(ORDER)(ORAL)
18.12.2023**

1) The petitioners have filed the present writ petition claiming the following reliefs:

- I) *By issuance of writ of Mandamus, directing the respondent No.2 to execute works of Mohalla Hajibagh, Village Gund Karim Khan under MG NAREGA Scheme.*
- II) *By writ of Mandamus, directing the respondents to supply the ration to the petitioner in accordance with ration management system without any hindrance.*
- III) *By writ of Mandamus, directing the respondent No.6 to start process of execution of developmental works for Mohalla Hajibagh, Village Gund Karim Khan under MG NAREGA Scheme and other schemes sponsored by the Govt. of India as well as schemes framed by the State Government.*
- IV) *By writ of Mandamus, directing the District Election Officer Baramulla to issue Panchayat Voter List in favour of Mohalla Hajibagh,*

Village Gund Karim Khan, so that they may be able to participate in the election process.

- V) *By writ of Prohibition, restraining the respondent NO.1 to executive any work under urban schemes in Mohalla Hajibagh, Village Gund Karim Khan, as such, the Mohalla Hajibagh, has not been declared under municipal limits area in pursuance to notification dated 11.04.2007.*
- VI) *By writ of Prohibition, restraining the Executive Officer Municipal Committee Watergam for causing harassments by not allowing the respondent No.6 to execute the process of development works.*

2) It appears that vide notification dated 11.04.2007 issued by the Government vide SRO 129, certain local areas of Watergam District Baramulla including the local area of Gund Karim Khan were declared as Municipal areas in terms of Section 4(6) of the Jammu & Kashmir Municipal Act. The petitioners, who represent the inhabitants of Mohalla Hajibagh of Village Gund Karim Khan, made a representation dated 02.05.2011 before the respondents urging them not to declare their village as local area of the Municipal Committee Watergam. It has been contended by the petitioners that Mohalla Hajibagh does not fall within the Municipal area as per the report of the field agency and, as such, the said area is required to be developed under MG NAREGA scheme but when respondent No.6 was approached for the purpose, he did not take any steps/action in this regard. It has been submitted that the Municipal Committee Watergam is not allowing the Rural Development Department to execute any development works in the area in question and the inhabitants of the said area are being deprived of the facilities that are available to the inhabitants of rural areas. The

petitioners are stated to have approached the Deputy Commissioner, Baramulla, for redressal of their grievances but to no avail. It has been contended that the respondents have no authority to declare Mohalla Hajibagh as a Municipal area without any notice or without any authority.

3) The respondents have contested the writ petition by filing a reply thereto, wherein it has been submitted that Village Gund Karim Khan has been delimited into two wards i.e. Gund Karim Khan-A comprising of Lone Mohalla, Baba Mohalla and Rather Mohalla and whereas Gund Karim Khan-B comprises of Mohalla Haji Bagh, Asthan Mohalla and Umar Colony. It has been submitted that as per SRO 129 dated 11.04.2007, the area of Village Gund Karim Khan comprising of Khasra Nos.01 to 1112 (the then Mohalla Ratherpora, Ganiepora, Babapora) were notified as urban area. After the settlement operation and Record of Right (ROR), Village Gund Karim Khan has now 1320 survey Nos. In short, the contention of the respondents is that after the settlement operation and delimitation of Village Gund Karim Khan, it has been divided into two wards, it comprises of 1320 Khasra Nos. and that Mohalla Hajibagh is located within Village Gund Karim Khan as a Municipal area in terms of notification dated 11.04.2007.

4) It has been further pleaded by the respondents that Haji Bagh Mohalla of Gund Karim Khan is not enlisted in Panchayat Electoral Roll but has been enlisted in Electoral Watergam as Ward No.09 which comprises of Umar Colony, Asthan Mohalla and Haji Bagh. It has been

also submitted that upon receipt of the representation from the villagers for exclusion of their village from Municipal Area of Municipal Committee, Watergam, a report was sought from the Executive Officer, Municipal Committee, Watergam and Tehsildar, Dangiwach, and the same which was submitted to the SDM. On these grounds it is contended that the writ petition is not maintainable.

5) I have heard learned counsel for the parties and perused record of the case.

6) The main contention of the petitioner is that in terms of notification dated 11.04.2007, Mohalla Haji Bagh of Village Gund Karim Khan has not been notified as a Municipal area but in spite of this, the respondents are not permitting the development works and other facilities which are available to rural areas.

7) It is correct that in notification dated 11.04.2007, Khasra Nos.01 to 1112 comprising Mohalla Ratherpora, Ganie Pora and Babapora of Village Gund Karim Khan, have been notified as Municipal areas but the respondents in their reply have taken a specific stand that in the year 2009, the settlement operation of the said village was undertaken and the number of Khasras in the village went upto 1320. It has also been submitted by the respondents that Village Gund Karim Khan underwent de-limitation into two wards and Mohalla Haji Bagh was included in Ward-B of the said village and electoral ward No.09 of the Municipality. In short, the respondents have contended that Mohalla Hajibagh was already a part of Village Gund Karim Khan that had been

notified as a Municipal area in terms of notification dated 11.04.2007 and after the settlement operation, a separate name was given to the habitation of the petitioners i.e. Mohalla Haji Bagh.

8) In view of the stand taken by the respondents, it cannot be stated that the habitation of the petitioners was not notified as local area in terms of notification dated 11.04.2007 (supra). In fact, the petitioners have admitted that their village has been notified as a Municipal area. This is clear from the fact that they have made an application before the official respondents seeking exclusion of their village from the Municipal area and on this application, the report has also been submitted by the Tehsildar to the SDM. Thus, without challenging the said notification, the petitioners cannot seek a declaration that their village should be treated as a rural area.

9) The question whether a particular habitation should be part of a Municipal area or of rural area cannot be gone into by this Court in the writ proceedings. The creation of various local areas including Municipal areas is a policy decision of the Government and the Courts are not equipped to judicially review the decisions made by the Executive on these matters. Thus, this Court cannot go into the merits of the decision of the Government to notify the habitation of the petitioners as a local area of a Municipality. It is for the respondents to take a decision on the representation of the petitioners for excluding their habitation from the purview of notification dated 11.04.2007. This

power is vested with the Government under Sections 6 and 7 of the Jammu and Kashmir Municipal Act.

10) For the foregoing reasons, while declining to interfere with the decision of the respondents to include the petitioners' village in the local area of Municipal Committee, Watergam, it is directed that the respondents shall consider the representation of the petitioners for exclusion of their village from the local area of aforesaid Municipal Committee expeditiously, preferably within a period of eight weeks from the date a copy of this order is served upon the respondents.

(SANJAY DHAR)
JUDGE

Srinagar
18.12.2023
"Bhat Altaf, PS"

Whether the order is reportable: **Yes/No**

