

02
Regular

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPAOW No. 23/2019

Tashi Tsering and anr.

..... Appellant (s)

Through: Mr. M Y Bhat, Sr. Adv with Mr.
Prince Hamza, Adv.

V/s

State of J&K and Ors.

..... Respondent(s)

Through: Mr. T M Shamsi, DSGI
with Ms. Rehana Qayoom, Adv.

Coram:

Hon'ble Mr. Justice Rajnesh Oswal, Judge

Hon'ble Mr. Justice Mohammad Yousuf Wani, Judge

ORDER (Oral)

04.04.2024

1. The writ petition was filed by the appellants for quashing order dated 25.09.2018 passed by respondent No. 2 and also for directing the respondents not to cause any interference with the use of water reservoir by the appellant which the appellants claim to be in their exclusive possession since times immemorial.
2. Vide order dated 25.09.2018 pursuant to the application submitted by the appellants, the District Collector/respondent No. 2 bifurcated the reservoir existing on land measuring 01 Kanal and 13 Marlas and kept the reservoir existing on 05 Marlas of land for the exclusive use by the appellants and the reservoir

- existing on remaining area of the encroached land measuring 01 Kanal and 08 Marlas of Village Mankhang Mohalla of Phyang Village Leh was kept at the disposal of the villagers of Mankhang Mohalla of Phyang Village Leh.
3. Mr. M Y Bhat, learned Senior Counsel appearing for the appellants submits that without conducting any inquiry, the impugned order has been passed by the District Collector i.e, respondent No. 2.
 4. Mr. T M Shamsi, learned DSGI submits that the appellants claim exclusive right in respect of use of water from the reservoir existing on land measuring 01 Kanal and 08 Marlas of village Mankhang Mohalla of Phyang Village Leh but they have not such right particularly when the reservoir is existing on the State land.
 5. Heard and perused the record.
 6. Perusal of the record reveals that the appellants approached the Deputy Commissioner/Chairman LAHDC Leh for restraining the other inhabitants from encroaching water reservoir of the appellants. Further order dated 20.08.2018 reveals that the District Collector came to the conclusion after perusing the revenue record and the report of the Tehsildar/Assistant Commissioner Development that reservoir exists on the land

measuring 01 Kanal and 13 Marlas, out of which 05 Marlas of land was owned by the appellants and 01 Kanal and 08 Marlas of the land was the State land. After making this observation, the reservoir was bifurcated into two parts i.e, 05 Marlas was kept for exclusive usage of the appellants and rest of the reservoir existing on land measuring 01 Kanal and 08 Marlas was kept for use of villagers of Mankhang Mohalla of Phyang Village Leh

7. The learned writ Court has examined the validity of the order passed by the District Collector and has rightly come to the conclusion that it was the appellants who invoked the jurisdiction of the Collector and further that the District Collector has passed the order for reclaiming the State land unauthorizedly occupied by the appellants.
8. In view of the fact that the appellants have been provided with the reservoir existing on land measuring 05 Marlas for their usage as such we do not find any illegality or impropriety in the order dated 20.08.2018 passed by respondent No. 2 and also the order dated 06th March 2019 passed by the writ Court. As such, the present appeal is found to be misconceived and the same is accordingly dismissed. However, in the event, the appellants require more water for irrigation purposes, they shall be at liberty

to approach the respondents and in case such request is made, the respondents shall proceed in accordance with law.

(Mohammad Yousuf Wani)
Judge

(Rajnish Oswal)
Judge

SRINAGAR

04.04.2024

Aasif

