

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...
WP(C) no.1631/2024
CM no.4427/2024
CM No.7871/2024

Anjum Majeed Age 43 years D/o Abdul Majeed Sofi R/o Shaheen Bagh,
Gulshan Nagar, Bypass, Srinagar, Proprietor: M/s Khaliq's Den Camping
Agency, situated at Lashpathri Sonamarg, District Ganderbal

.....Appellant(s)/Petitioner(s)

Through: Mr S.N.Ratanpuri, Advocate

Versus

1. Government of J&K through Commissioner/Secretary to Government,
Tourism Department, Civil Secretariat, Srinagar/Jammu
2. Director, Tourism, Tourist Reception Centre, Srinagar, Kashmir
3. Chief Executive Officer, Sonamarg Development Authority, SDA Office
Sonamarg District Ganderbal
4. Block Development Officer, Block Gund District Ganderbal

.....Respondent(s)

Through: Mr Bikramdeep Singh, Dy.AG

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL JUDGE

ORDER
11.12.2024

1. In terms of order dated 26th July 2024, four weeks' time was given to respondents to file Reply, which till date has not been filed, albeit opportunities thereafter were given to them.

2. Petitioner seeks issuance of writ of certiorari, aiming at quashing Notices dated 29th June 2024, 3rd July 2024 and 19th July 2024, issued by respondent no.3. She also seeks passing of a writ of prohibition, so as to prohibit respondent no.3 from interfering in the smooth conduct of business

by petitioner in land measuring 05 Kanals falling under Khasra no.7 at Village Sonamarg Tehsil Gund District Ganderbal, as the said land/site does not fall under the jurisdiction of respondent no.3 in terms of Notification/SRO 305 dated 11th September 2003.

3. Threshold submission of learned counsel for petitioner is that he has placed on record a copy of judgement dated 18th November 2024, passed by the Division Bench of this Court in WP(C) no.1335/2024 titled as *Charanpreet Singh Grewal v. Government of J&K and others*, vide CM no.7871/2024. While adverting attention of this Court to the said judgement, learned counsel for petitioner would contend that the case in hand is squarely covered by the said judgement and instant writ petition may be disposed of on the same lines.

4. It would be apt to reproduce relevant portion of judgement, cited by learned counsel for petitioner, hereunder:

“6. From reading of definition of „Local Area“ as given in Section 2(e), there should be no doubt that local area is one as is declared to be so under sub-section (1) of Section 3 and a local area can be declared under sub- section (1) of Section 3 only by the Government that too by issuing a notification in the Government Gazette. Section 4 deals with constitution of Development Authority for such area. So far as preparation of Master Plan for the Local Area is concerned, same is dealt with by Section 7 of the Development Act which for facility of reference is also reproduced hereunder: -

“7. Civic Survey of, and master plan for the area. –(1) An Authority shall, as soon as may be, carry out a civic survey of and prepare a master plan for the Local Area for which it is constituted.

(2) The master plan shall-

(a) define the various zones into which the Local Area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and

(b) serve as a basic pattern of frame-work within which the zonal development plans of the various zones of the Local Area may be prepared.

(3) The master plan may provide for any other matter which is necessary for the proper development of the Local Area.”

7. As is evident from plain reading of Section 7, a Master Plan can be prepared only for the „Local Area“ declared to be so under Section

3(1) by the authority constituted for such area in accordance with the provisions of Section 4 of the Development Act. Admittedly, in the instant case, the Government in exercise of powers conferred by sub-section (1) of Section 3 of the Development Act has issued SRO 305 dated 11th of September 2003 declaring and notifying the areas to be the "Local Area" for the purpose of the Act and has also constituted an authority for such local area to be known as Sonamarg Development Authority. The parties do not dispute that the area where the petitioner intends to raise construction of his residential hut does not fall in the areas notified by SRO 301 of 2003. That being the clear position emerging from the provisions of Development Act read with SRO 301 of 2003, it cannot be said that Sonamarg Development Authority will have jurisdiction to regulate the constructions even in the areas which are outside the local area declared for the purposes of the Development Act and administered by Sonamarg Development Authority constituted therefor. The area clearly falls outside the jurisdiction of the authority of the Sonamarg Development Authority and is therefore not subject to any control or regulation by the Sonamarg Development Authority.

8. Having said that, we also want to make it clear that the construction even in the area which is outside the Sonamarg Development Authority cannot be haphazard and without the control of the Government. We are told that the Government has already issued a Government Order regulating the grant of permission in the rural areas and the same is being strictly applied in the case of constructions which are raised in the areas falling under panchayats and other rural areas.

9. In view of the aforesaid, this petition is allowed. The respondents are directed not to interfere or cause interference in the construction which is being raised by the petitioner otherwise than in due course of law. The Block Development Officer, Gund and authorities of rural development shall ensure that the construction is raised by the petitioner strictly in terms of the permission granted by Block Development Officer, Gund. Since the permission is for raising the construction of the residential house, the same shall remain so and the use thereof shall not be changed without the permission of the authority.

10. Disposed of."

5. As is inferable from the judgement supra, once an area does not fall within the limits/local area of Sonamarg Development Authority (SDA), any activity either recreational or developmental or constructional cannot be obstructed or hindered muchless regulated by Sonamarg Development Authority as it is only the concerned Panchayats/authorities of Rural Development Department that can regulate such activities in those areas which do not fall under SRO 305 of 2003. The Division Bench has lastly directed respondents no to interfere or cause interference in the

construction which is being raised by writ petitioner and the Block Development Officer, Gund and authorities of Rural Development have also been directed to ensure that the construction is raised by writ petitioner strictly in terms of the permission granted by BDO, Gund. If that being the position, Sonamarg Development Authority or for that matter respondent no.3 herein cannot interfere in any activity being undertaken in the area not falling within the limits of SDA which includes the land of petitioner.

6. In view of above and taking into account judgement dated 18th November 2024, passed by the Division Bench of this Court in WP(C) no.1335/2024 titled as *Charanpreet Singh Grewal v. Government of J&K and others*, having binding precedence, the impugned notices dated 29th June 2024, 3rd July 2024 and 19th July 2024, issued by respondent no.3 are set-aside. The construction, if any, being/sought to be raised by petitioner shall be undertaken after permission from Block Development Officer, Gund and/or authorities of Rural Development Department.

7. **Disposed of** in terms of above.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
11.12.2024
'Qazi Amjad, Secy'