

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 147/2021
CM Nos. 742 & 743/2021

**Praba Devi aged 75 years, W/O Chain Singh,
R/O Village Machlian, Nagbani, District Jammu**

.....Petitioner(s)

Through: Mr. R.P Sharma, Advocate.

Vs.

**01.UT of J&K through
Commissioner/Secretary, Department of Civil
Secretariat, Jammu.**

..... Respondent(s)

**02. Executive Engineer, Irrigation Department,
Division, Jammu.**

**03. Assistant Executive Engineer,
Irrigation Department, Sub-Division,
Domana, Jammu.**

Through: Ms. Chetna Manhas, Advocate vice
Mrs. Monika Kohli, Sr. AAG.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT(ORAL)

25.03.2025

01. Petitioner through the medium of this petition, sought following
reliefs:-

- (i) *Issuance of an appropriate writ, direction or order of the nature of Certiorari to quash order No. ISD/412-15 dated: 28.1.2021 issued by respondent no.2 and 3 directing petitioner to remove the illegal encroachment alleged with respect to land measuring 80' X 15' comprising S.No.349 situated at village Machlian invoking powers under Section (2) of Section 157 of J&K Water Resources (Regulation 86 Management) Act 2010 being arbitrary discriminatory, without any enquiry, without any notice of show cause or opportunity of being heard in violation of principles of natural justice and fair play, against the revenue record and in contravention of provisions of J86 Water Resources (Regulation 86 Management) Act 2010 and rules made thereunder and in violation of Article 14, 19, 300-A & 21 of the Constitution.*
- (ii) *Issuance of an appropriate writ, direction, or order of the nature of prohibition restraining the respondents from demolishing,*

damaging or causing any obstruction in the exercise of statutory rights of ownership and possession being exercised with respect to residential house constructed on land comprising survey no. 433 measuring IK-19 Marlas situated at village Machliam, Tehsil and District, Jammu.

- (iii) *Issuance of an appropriate writ, direction or order which is just and proper in the facts and circumstances of the case to grant relief to the petitioner.*

02. It is the specific case of the petitioner that the order of demolition dated 28.01.2021 passed by the respondent No. 3, i.e., Assistant Executive Engineer, Irrigation Department, Sub-Division, Domana Jammu, which is impugned in the instant petition, is arbitrary and discriminatory, as the same has been issued without conducting any inquiry or giving any opportunity of being heard to her. Before passing the said order, the petitioner has been condemned unheard and according to learned counsel for the petitioner, the petitioner has been deprived of her ownership and possessory rights, which is violative of Article 300-A of the Constitution of India.

03. Learned counsel for the petitioner submits that the impugned order has been passed by the respondent No. 3 on the report of Ziladar Muthi and as per the directions of the higher authorities and the same has caused irreparable loss to the residential house of the petitioner and in case, the said demolition is carried on, it will cause great grave prejudice to the petitioner, which could not be compensated by any means whatsoever.

04. Lastly, Mr. Sharma, learned counsel for the petitioner submits that an opportunity should be granted to challenge the demarcation report. He contends that the report was conducted ex-parte, thereby depriving the petitioner of an opportunity to be heard in the process.

05. *Per contra*, reply has been filed on behalf of the respondents, in which they have taken a preliminary objection that the petitioner has not come to this

Court with clean hands and has suppressed material facts and has also tried to mislead this Court by sheer misrepresentation of facts, as such, the present petition is liable to be dismissed being devoid of any merit.

06. The respondents have further pleaded in the reply affidavit that the Hon'ble Division Bench of this Court in PIL No. 02/2014 titled "*Molvi Peer Ul-Haq vs. Chief Engineer & Ors.*" has issued a categorical direction that such encroachments are one of the basic factor contributing to the devastating floods of September, 2014 in the valley of Kashmir and the respondents have been entrusted with a task of restoring the original width of irrigation land and for removal of all encroachments without any compromise or laxity so as to ensure the effective implementation of the J&K Water Resources (Regulation & Management Act 2010.

07. It is specific stand of the respondents that the petitioner has illegally occupied a portion of the irrigation land and for removal of the said encroachment, the then Assistant Executive Engineer had, accordingly, instructed the petitioner to remove the illegal encroachment and to vacate the irrigation land, in terms of powers vested to him by virtue of Section 67 of J&K Water Resources (Regulation & Management Act 2010.

08. The respondents have taken a further stand that petitioner has encroached upon the irrigation land and as per the Revenue record, the house of the petitioner has been constructed on Khasra No. 433 (new) 349 old and 170 old, which has a total area of 1 kanal and 19 marlas and out of the total area, 1 kanal and 5 marlas is the ownership land of the petitioner and 14 marlas land belongs to State, which can be corroborated from the bare perusal of the demarcation report, which has been placed on record along with the reply filed by the respondents.

09. The learned counsel for the respondents has drawn attention of this Court to the statutory provision of Section 67 of J&K Water Resources (Regulation and Management) Act 2010. A perusal whereof reveals that the Assistant Executive Engineer may by order, require any person interfering with or encroaching upon any irrigation or hydraulic work to remove such interference or encroachment within the time specified in such order and if such person does not comply with such orders, the Assistant Executive Engineer has the Authority to remove the interference or encroachment at the expense of such defaulters and take such action as may be necessary including the recovery of the expenses incurred on removal of such interference or encroachment. For the facility of reference, Section 67 of J&K Water Resources (Regulation and Management) Act 2010 is reproduced hereinunder:-

- 1). *“Assistant Executive Engineer may, by order, require any person interfering with or encroaching upon any irrigation or hydraulic work to remove such interference or encroachment within the time specified in such order and if such person does not comply with such order, the Assistant Executive Engineer may remove the interference or encroachment at the expense of such defaulter and take such other action as may be necessary including the recovery of expenses incurred on removal of such interference or encroachment.”*
- 2). *Assistant Executive Engineer may, if he deems necessary, seek the assistance of police force for removal of such interference or encroachment.”*

10. Learned counsel appearing on behalf of the respondents has also placed reliance upon Section 157 (2) of the J&K Water Resources (Regulation and Management) Act 2010 which *inter alia* provides that if such person neglects or refuses to obey the order issued under Sub-Section (1) within the period so fixed, the Competent Authority may carry out the work in accordance with such order and the cost thereof shall be recovered from such person as arrears of Land Revenue Act. For the facility of reference Section 157 (2) of the J&K Water Resources (Regulation and Management) Act 2010, is reproduced hereinunder:-

- (2) *“If such person neglects or refuses to obey the order issued under sub-section (1) within the period so fixed, the Assistant Executive Engineer may carry out the work in accordance with such order and the cost thereof shall be recoverable from such person as arrears of land revenue.”*

11. The respondents further submits that as per the available record as well as the joint demarcation report conducted by Department of Irrigation and Flood Control and Revenue Department, it has been found that the land belonging to Irrigation Department is 10 Karu (55ft) in Khasra No. 170(old) (337 new) as “Gair Mumkin Nahar” in old settlement, which is now mentioned as Gair Mumkin Sadak and Khul in new settlement, which clearly shows that the petitioner has encroached upon the irrigation land by way of construction of a shop and with a view to substantiate the stand taken by the respondents, the demarcation report has also been placed on record by the respondents.

12. Heard.

13. Admit.

14. With the consent of learned counsels for the parties, the present petition is taken on board for final disposal.

15. The record reveals that on the very first day of hearing, i.e., on 03.02.2021, a Co-ordinate Bench of this Court has protected the petitioner and the order impugned has been stayed and the interim direction continues to be operative as on today.

16. Since it is a specific stand of the respondents that the petitioner has illegally encroached upon 14 Marlas of the State land, therefore, no notice was required to be issued to her in terms of the direction passed by the Hon’ble Apex Court and also Division Bench of this Court in catena of judgments. The petitioner, has voluntarily, accepted the demarcation report without raising any objection and

the petitioner by no stretch of imagination, be permitted to encroach upon the subject land. This is particularly so, when the demarcation report clearly establishes the land belonging to the Irrigation Department and the same has been recognized as State land as per the findings of the Revenue Demarcation Report. Furthermore, the directions issued by the Division Bench of this Court reinforce the legal position that the petitioner is not entitled to encroach upon the said land.

17. The Hon'ble Apex Court in a celebrated judgment titled "*In Re: Directions in the matter of demolition of structures*" in Writ Petition (Civil) No. 295/2022, decided on 13.11.2024, has made following observations:-

2. **Exception:** It is also pertinent to note that this Hon'ble Court has itself, in Order dt. 17.09.2024, carved an exception in case of "unauthorised structure[s] in any public place such as a road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order of demolition made by a Court of law." Therefore, it is submitted that any guidelines/SoP framed by this Hon'ble Court may not provide for notice in such cases, in case the relevant municipal law does not specifically provide for the same. Every municipal law also provides for situations where demolitions may be carried out without notice. For instance, Section 26C of the Uttar Pradesh Urban Planning and Development Act, 1973 states:

"Section 26-C. Authority may without notice remove anything erected or deposited in contraventions of Act.- The Authority or an officer authorised by it in this behalf may, without notice, cause to be removed-

(a) Any wall, fence, rail, post, Step, booth or other structure whether fixed or movable and whether of a permanent or temporary nature or any fixture which shall be erected, or set in or upon or over any street or upon or over any open channel, drain, well or tank contrary to the provisions of this Act.

(b) Any stall, chair, bench, box, ladder, bale, board or shelf of any other thing whatever placed, deposited, projected, attached or suspended in, upon, from or to any place in contravention of this Act."

3. It is submitted that a perusal of the Chart of demolitions submitted by the Petitioners (at pp. 28 - 32 of the Compilation of Suggestions submitted by the Ld. Nodal Senior Counsel), itself notes that the demolitions at S. nos. 3, 4, 5, 6, 7, 10, 16, 22) were all of structures that amounted to illegal encroachment in public places, which itself has been carved out of this Hon'ble Court's Order dt. 17.09.2024.

Therefore, it is submitted that the SoP framed by this Hon'ble Court may not allow for notice in case of encroachment on public land, if the relevant municipal law allows for such demolition without notice. At best, the illegal encroachers on the said public land/public place, may be granted 48 hours to vacate such encroachment. This Hon'ble Court in the Delhi Ceiling cases (MC Mehta v. Union of India), has also endorsed a 48 hour notice period in certain cases.

18. Thus, in the light of the law laid down by the Apex Court in the aforesaid judgment, it can safely be concluded that no notice is required to be issued to an encroacher, who has encroached upon the State land

19. For the foregoing reasons and the discussion made hereinabove, this Court is of the opinion that the petitioner has not come to this Court with clean hands and has suppressed material facts and has also tried to mislead this Court by sheer misrepresentation of facts.

20. Therefore, this Court is of the view that a person who does not come to the Court with clean hands is precluded from pleading equity and in the aforesaid backdrop, this Court is not inclined to grant any relief to the petitioner and concurs with the findings recorded by the respondent No. 3, i.e., Assistant Executive Engineer, Irrigation Department, Sub-Division, Domana Jammu in the impugned order dated 28.01.2021 and the challenge thrown to the same by the petitioner in the instant petition by invoking the powers under Article 226 of the Constitution of India is ill-founded and the writ petition as such not maintainable being devoid of any merit and deserves dismissal.

21. Viewed thus, the impugned order dated 28.01.2021 passed by the respondent No. 3, i.e., Assistant Executive Engineer, Irrigation Department, Sub-Division, Domana Jammu is *upheld*. Accordingly, the writ petition is *dismissed* along with connected applications.

(Wasim Sadiq Nargal)
Judge

Jammu
25.03.2025
Abinash