

IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 511/2023

Inhabitants of Block Teetwal Karnah Through:

...Petitioner(s)

1. Mohammad Yaqoob Mughal
S/O Gazi Khan Mugal
R/O. Taad, Tehsil Karnah District Kupwara.
2. Farooq Ahmad Mugal
S/O. Mohammad Yaseen Mughal
R/O. Taad Tehsil Karnah District Kupwara.
3. Mohammad Syed
S/O. Raj Wali
R/O. Dhani Tehsil Karnah District Kupwara.
4. Bashir Hussain Shah
S/O. Ali Akbar Shah
R/O Panjtaran Tehsil Karnah District Kupwara.
5. Kaiser Din
S/O. Ghulam Din
R/O. Prada, Tehsil Karnah District Kupwara.
6. Abdul Rashid Mughal
S/O. Aziz-Ur-Rehman
R/O. Prada, Tehsil Karnah District Kupwara.
7. Manzoor Ahmad Dar
S/O. Ghulam Nabi Dar
R/O. Chanipora Balla Tehsil Karnah District Kupwara.

Through: None

Vs.

...Respondent(s)

1. UT of Jammu and Kashmir through
Commissioner Secretary to Government
Rural Development Department, Civil
Secretariat Srinagar/Jammu.
2. Deputy Commissioner,
Kupwara.
3. Assistant Commissioner, Development
(ACD) District Kupwara.
4. Sub Divisional Magistrate, Karnah
District Kupwara.
5. Block Development Officer, Teetwal,
Tehsil Karnah District Kupwara.

Through: Mr. Wasim Gul, Government Advocate.

CORAM:

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

JUDGMENT
14.05.2025

Oral:

1. The petitioners, through the medium of instant petition, have sought Writ in the nature of Mandamus, commanding upon the respondents not to shift the Block Headquarter from Chitterkote to Teetwal, besides, seeking a direction to the respondents to construct the new building at Chitterkote, Chamkote or at some other centrally located place by getting expert report regarding feasibility.
2. The instant petition has been filed by the petitioners in a representative capacity. Their specific case is that they claim to be residents of Block Teetwal and hail from district villages of the said Block. The petitioners plead that entire Block Teetwal is a hilly backward and border area of the Tehsil Karnah District Kupwara, and some of the population of the said Block is located and scattered on the very high altitudes and reaches and the people of the said block have to ascend and descend high altitudes through very difficult terrains so as to approach the center place of Block Teetwal and the Tehsil Headquarter. The petitioners further plead in the instant petition that the Block Teetwal is located and is working at centrally located place Chitterkote for last many decades having been located after getting the feasibility report from the concerned Headquarters and the said place of Chitterkote and Chamkote is centrally located place of Block Teetwal.

3. It is the specific case of the petitioners that the people of the area as well as functionaries of the various departments have no objection regarding the location and Headquarters of the Block building and its functioning at Chitterkote Karnah. However, the Government has sanctioned a budget for construction of new building for the block and the said building is to be constructed at Chitterkote, Chamkote or at the place centrally located in the said Block so as to make convenience to the general public, but all of sudden, the Headquarter of the said block is sought to be shifted from Chitterkote to Teetwal, which is the last border point and is highly affected by the cross border shelling exchanged between the two countries.
4. The further case of the petitioners is that the move of shifting the Block Headquarter from Chitterkote to Teetwal is unilateral, arbitrary and malafide based on the vested interest of the concerned Sarpanch of Panchayat Halqa Teetwal, who has personal interest in getting the block shifted and while taking the aforesaid decision, the general public and their elected representatives, who are likely to be effected, have not been taken into confidence. Feeling aggrieved of the said action on the part of respondents, the instant petition has been preferred.
5. *Per contra*, reply stands filed on behalf of the respondent no.4, in which a specific stand has been taken that Block Teetwal was created in the year 2000 vide Government Order No. 18/Agri of 2000, dated 4th February, 2000 with Headquarters at Teetwal and the block office initially functioned from Teetwal, but due

to past cross border shelling, was temporarily shifted to Halqa Chamkote B. The respondent No. 4 has taken further stand that construction for the block office has been started in the year 2023-24 and about 80% of the work has been completed and the averment of the petitioners that Chamkote-B is centrally located place, has been specifically denied being contrary to record. The further stand is that the Block office is temporarily functioning from CIC building at Chitterkote, as the construction of block office was under construction at Teetwal when the aforesaid reply was filed by the respondents and the plan for the construction of building has been formulated by respected Gram Sabha and shifting of block office to Teetwal shall only fulfill the obligations envisaged under the above mentioned Government Order. Thus, the allegation of the petitioners projected in the instant petition is factually incorrect and liable to be rejected. The respondents have submitted that no prejudice or inconvenience shall be caused to the inhabitants of the whole block Teetwal and no loss shall cause to the Government exchequer as shifting of the Block has already been taken place.

6. In addition to reply filed on behalf of respondent no. 4, the Deputy Commissioner, Kupwara, [respondent no. 2] has filed supplementary affidavit in response to the Order dated 24th July, 2024, in which, the Deputy Commissioner has taken a specific stand, which for facility of reference, are reproduced as under:-

“4. That it is respectfully submitted that the Block Teetwal is a hilly area, but there is no issue of connectivity In the Block Teetwal as most of the main roads leading to Teetwal have been macadamized. All the villages of Teetwal have easy access to Teetwal within a short time and the block Teetwal was created in the year 2000 vide Government order No. 8/Agri of 2000, Dated 04/02/2000 with headquarters at Teetwal. The block office was initially functioning from Teetwal but due to past cross border shelling was temporarily shifted to Halqa Chamkote B/ Chitterkote. Further it is submitted that the construction work for block office has been started in the year 2023-24 and about 80% of the work has been completed. It is further submitted that Halqa Chamkote B/Chitterkote is not any centrally located place. Further the determination of location for functioning of Block Teetwal being an administrative issue has been decided by the administrative authorities after deliberating the all connected issues and has been decided administratively for its functioning at Teetwal i.e the place at where the headquarters of block Teetwal were required to be established in pursuance of the above mentioned Government order. It is further submitted that the shifting of block headquarters of block Teetwal were effected due to cross border shelling by the then Administration temporarily without issuance of any formal order as reported by SDM Tangdar. (Copy of Government Order is annexed as ANNEXURE-ii)

5. That it is respectfully submitted that initially block headquarters were located and working at Teetwal and it was shifted temporarily to Halqa Chamkote B/Chitterkote due to cross border shelling. However Halqa Chamkote B/Chitterkote is not a centrally located area. Now owing to the normalcy and peace at the L.O.C Teetwal and in view of various initiatives in hand taken by the Government for the development of the Teetwal due to its historical significance and being the most famous tourist place located at the bank of Kishanganga river, it has been decided to implement the order No. 18/Agri of 2000 dated 04/02/2000, which clearly provides that the block headquarters of block Teetwal shall be located at Teetwal, as it was temporarily shifted to village Chamkote-B/ Chitterkote due to cross border shelling only/safety of the common people, during the cross border shelling period. The construction work for block office at Teetwal has been started in the year 2023-24 and about 80% of the work has been completed.

6. That it is respectfully submitted that the block office is temporarily functioning from CIC building at Chitterkote as the construction of block office building is under construction at Teetwal. The plan for the construction of the said building has been formulated by respective Gram Sabha. The village Chitterkote is not any centrally located area. The block office is being shifted to its initial position and it is in the interests for the development of the whole area of the block Teetwal. There is no violation or arbitrariness on part of the respondents and shifting will not adversely affect the rights and interests of the inhabitants of block Teetwal by any means, in contrast, it is in the interests of the common people and development of the whole block.”

7. The respondent-Deputy Commissioner, Kupwara, in the supplementary affidavit, has stated that the formal order for shifting the block Headquarters from Teetwal to Chitterkote and from Chitterkote to Teetwal has not been issued, instead the block Teetwal was created in the year 2000 with the condition that the Headquarters of Block shall be located at Teetwal. Thus, the grievance projected by the petitioners in the instant petition cannot be acceded to and the writ petition filed by the petitioners, as such, is devoid of any merit and deserves to be dismissed.
8. Heard learned counsel for the respondents at length and perused the material on record and none has appeared on behalf of the petitioners and even the matter was adjourned on 11th April, 2025 on account of arguing counsel for the petitioners.
9. Insofar as the issue of shifting of Block Headquarters is concerned, it is the prerogative of the Government to take a call as it falls within the realm of policy. Since in the present case, the issue of shifting the block Headquarters has been decided by way of an administrative decision by the competent authority for its functioning at Teetwal i.e., the place, where the headquarters of block Teetwal were required to be established in pursuance of the above mentioned Government order as also on the basis of opinion rendered by the experts and this Court cannot usurp the powers of the experts to render any opinion having no explanation as to where the Block Headquarters are to be located or shifted.

10. The petitioners have alleged malafides in the instant petition to the effect that entire exercise with regard to the shifting of Block Headquarters have been done at the behest of some Sarpanch of Panchayat Halqa Teetwal who has personal interest in getting the block shifted.

11. From the bare perusal of the record, no specific allegation has been leveled against the aforesaid Sarpanch and even he has not been arrayed by name as a party in the instant petition. The decision taken by the Government is based on the report of the experts and also keeping in view the feasibility. Thus, this Court cannot substitute its opinion to that of the opinion given by the experts. Moreso, the allegation of malafide cannot be gone into unless the person against whom such allegation has been leveled, is arrayed by name and there is strong foundation of such allegation. Mere evasive allegation will not suffice the purpose for returning any finding on the ground of malafide. Thus, the ground of malafide cannot be gone into.

12. It is well settled that the matters pertaining to the policy decisions are not susceptible to the judicial review, unless, the same are loathed with malafide consideration or perverse. No such foundation has been laid down by the petitioners in the instant petition, which could be a justifiable reason for interfering with regard to the decision which is rational legal and logical keeping in view the interest of the public at large. This Court has no expertise to go into the issue of shifting of Block Headquarters and to render any finding, as to where, the

same could be located nor it is within the domain of the petitioners to justify. This falls within the realm of policy decision which has been taken on the report submitted by the experts and its determination should be left to the experts.

13. At this juncture this Court deems it proper to refer to the decision rendered by Hon'ble Supreme Court in the case titled ***Directorate of Film Festivals & Ors. Vs. Gaurav Ashwin Jain & Ors., (2007) 4 SCC 737***, has held as follows:.

"...16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy nor are courts Advisors to the executive on matters of policy which the executive is entitled to formulate."

14. Again the Hon'ble Supreme Court in the case titled as ***State of Punjab & Ors. Vs Ram Lubhaya Bagga & Ors., (1998) 4 SCC 117***, has held as follows:

"...When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out in affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraint"

15. Further, the Hon'ble Supreme Court in the case titled as ***Fertilizer Corpn. Kamgar Union (Regd.), Sindri v. Union of India*** reported in ***(1981) 1 SCC 568***, while upholding the decision, observed that:

35. ... We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the directorate of a government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration..."

16. Therefore, making policies and executing them comes within the sphere of activities of the executive. It is not within the domain of the courts to return any finding on such decisions, which are taken by Government by way of policy matters on the opinion of the experts keeping in view the larger public interest. Moreover, the courts does not have the expertise and the domain knowledge to make policies or to amend them. On the other hand, the executive has experts, professionals, administrators, advisors, etc., in a given field and has the expertise to make policies after taking into consideration all aspects of a matter.

17. Thus, in the light of the law laid down by the Apex Court and various High Court in catena of judgments, the relief claimed by the petitioners against the respondents not to shift the Block Headquarters from Chitterkote to Teetwal is contrary to the stand taken by the respondents, wherein the Deputy Commissioner, Kupwara has specifically pleaded that the construction work for Block Office, Teetwal has been started in

the year 2023-24 and 80% of the work was completed, when the said supplementary affidavit was filed by DC, Kupwara, on 2nd August 2024 and by now, the work must have been completed. The writ petition which is devoid of any merits deserves dismissal.

18. Accordingly, the writ petition which is bereft of any merit, is ***dismissed*** along with all connected applications.

SRINAGAR:
14.05.2025
"Shamim Dar"

