

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 2762/2022 CM(6978/2022)

VILLAGERS OF VILLAGES BULBUL ...Petitioner(s)/Appellant(s)
NOWGAM AND BRAKPORA(SENIOR
CITIZEN)

Through: Mr. Rizwan ul Zaman, Advocate.

Vs.

UNION TERRITORY OF J AND K AND ORS. ...Respondent(s)
(PUBLIC HEALTH ENGINEERING
DEPARTMENT)

Through: Mr. Jehangir Ahmad Dar, GA.

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER

13.05.2025

1. The petitioner, after going through the reply filed by the respondents, is pressing the petition to the extent of relief No. IV only, projected in the prayer clause of the petition and submits that he is not pressing any other relief which has been sought in the instant petition.
2. For facility of reference para IV of the prayer clause of the writ petition is reproduced as under:

IV. MANDAMUS COMMANDING, the respondents to
save the spring commonly known as Nagrad for
agricultural purposes as the same was kept by all the
Government right from the time of Maharaja Hari Singh
for the purposes of irrigation.

3. The petitioners have projected the concern which has been projected in para 'c' of the writ petition, a perusal whereof reveals that the respondent-department is executing the Water Supply scheme Bulbul Nowgam under Jal Jeevan Mission for providing potable water supply

facilities to the entire village of Bulbul Nowgam. The work for construction of 0.60 lac Gallons OHT is already under execution and the pipe materials stands already lifted from Divisional Store for laying along with the entire village, the alignment of the 200 mm supply main from OHT passes along the petitioners paddy fields and the petitioner has placed reliance upon the Jammu and Kashmir Water Resources (Regulation & Management) Act 2010 and clause 12 of chapter III provides that the Government may lay or carry any pipe for the purpose of arranging or maintaining the supply of water through across under or over any road, street or a place laid out as or intended for a road or street or any field orchard, park garden or other private or public premises under the control of a local authority, Government Department, board, or a private owner or occupier and may at all times do every such act which may be necessary or expedient for repairing or maintaining such pipes in an effective state.

4. The learned counsel for the petitioner has vehemently argued that the aforesaid act makes it mandatory to serve an advance notice prior to taking up the work in hand, and as such, through the medium of this notice, farmers are informed that the 200 mm Dia pipe line shall be laid along their paddy fields at Bulbul Nowgam, and a grievance was projected by the villagers that the pipe shall be laid underground so that no inconvenience is caused to the farmers in the future.
5. The further case of the petitioner is that the petitioner submitted a reply to the aforesaid notice before the official respondents and the respondents instead of taking a decision on the reply filed by the

petitioner have issued a tender e-NIT vide No. 129 of 2021-22 dated 21.02.2022 which is impugned in the present petition.

6. The only concern which has been raised by the petitioners at this stage is that if the additional Water Supply Scheme is allowed it will not only affect the Govt. exchequer but will also affect the farmers in getting their fields irrigated.
7. The petitioner has also projected in the instant petition that if the additional Water Supply scheme is permitted as mentioned in the impugned tender notice, it will tantamount to the denial of the right of agricultural activities of the farmers and will also deprive them of their right to livelihood which is guaranteed to them under Article 21 of the Constitution of India.
8. It has also been urged by the counsel for the petitioner that the respondents are attempting to link the old water supply scheme with the Additional Water Supply Scheme for their ulterior motives and this will also cause irreparable loss to the Government exchequer and the action of launching the Additional Water Supply scheme is an arbitrary exercise of powers by the respondents that too without any proper survey or any verification as required under the Act governing the subject.
9. *Per contra*, on the other hand, the reply stands filed on behalf of the respondents in which the respondents have raised a preliminary objection that since the instant petition raises disputed questions of fact, the same cannot be gone into while exercising the writ jurisdiction.
10. The respondents have specifically pleaded in their reply affidavit that Village Bulbul Nowgam is currently being fed from an old spring

located at Sandoo with water being directly fed from the spring through pipe lines of various Dia, laid long back and most parts of the pipe distribution system are in deteriorated condition, besides having no provision for treatment of water

11.The respondents have justified their stand of issuing the e-NIT on the ground that since the existing supplies in no way cater to the demand of entire village and due to low level difference, various pockets of the village seldom see water flowing through the tapes. However, the Government of India aimed to provide potable water supply facilities to the entire rural areas and, accordingly, the area was proposed to be augmented with a new water supply scheme so as to provide water supply to the entire population with sufficient quantity and good quality.

12.It is also been submitted that the source has been proposed as a local spring “Nagrad” which was also proposed by the village Pani Samitee and source certificate has been signed by the PRI of the village along with other Pani Samitee members.

13.The respondents while filing the reply affidavit has taken care of the concern projected by the petitioner by specifically pleading that the Spring is having sufficient discharge and in no way would affect the agricultural productivity of the area. Besides the respondents have assured the petitioner that the pipe line would be embedded sufficiently underground so that it may cause no inconvenience at any point of time during land use.

14.Thus, according to Mr. Jahangir Dar, learned GA, appearing for the respondents, two issues which have been raised by the petitioner have

been taken due care of by the respondents in the reply affidavit and thus, the grievance which has been projected by the petitioner stands redressed.

15. Heard Mr. Rizwan ul Zaman, learned counsel for the petitioner and also Mr. Jehangir Ahmad Dar, learned GA, for the respondents at length and perused the record.

16. With the consent of the learned counsel for the parties, the instant petition is taken up for final disposal at this stage.

17. Since the only grievance which has been raised by the petitioner at this stage was that the act of the respondents should not affect the agricultural productivity of the area and also the pipe lines which were being embedded should be sufficiently underground so that no inconvenience is caused to the petitioners.

18. Thus both the issues have been redressed by the respondents in the reply affidavit wherein the respondents have taken a specific stand that the Spring is having sufficient discharge and in no way would affect the agricultural productivity of the area and insofar as the embedment of the pipe line is concerned, the respondents have assured the petitioner that the pipe line would be embedded sufficiently underground so that it may cause no inconvenience at any point of time during land use.

19. In view of the above, no fruitful purpose would be served by keeping the present petition pending. Accordingly, the writ petition is disposed of and allowed only to the extent of Relief No. IV, as prayed for by the petitioner. Insofar as the other reliefs are concerned, the same are not being pressed by the petitioner; therefore, no opinion is expressed

thereon. This Court is not expressing any opinion on the maintainability of the instant petition, however the same has been disposed of in the light of the stand taken by the respondents, whereby, the only grievance raised by the petitioner by virtue of clause IV of the prayer, has been admitted by the respondents and stand redressed.

20.The writ petition is disposed of in the manner as indicated above.

SRINAGAR
13.05.2025
Hilal Ahmad

