Sr. No. 25
Regular List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

WP(C) 1335/2024 CM(3645/2024)

CHARANPREET SINGH GREWAL …Petitioner(s)/Appellant(s)

Through: Mr. S. N. Ratanpuri, Advocate &
Ms. Fiza Khursheed, Advocate

Vs.

GOVERNMENT OF J AND K AND ORS ...Respondent(s)

Through: Mr. Ilyas Laway, GA

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

O R D E R

18.11.2024

1. Petitioner claims to be owner in possession of land measuring 02 Kanals falling under Khasra No. 9 at Village Sonamarg, Tehsil Gund, District Ganderbal ["Subject Land"]. It is the case of the petitioner that after purchase of subject land, the petitioner approached Sonamarg Development Authority for issuance of requisite permission for construction of residential hut. The petitioner was, however, told that the land purchased by him did not fall within the jurisdiction of Sonamarg Development Authority and therefore he was required to approach Block Development Officer, Gund for grant of requisite permission. The petitioner claims that he approached Block Development Officer Gund and after completion of requisite formalities, was granted the requisite permission, vide No. PYT/SA/19 dated 22 February 2024.

2. Grievance of the petitioner is that when he started raising the construction of residential hut strictly in terms of the permission granted by

Block Development Officer, Gund, the officials of Sonamarg Development Authority appeared on the spot and started interfering in the construction activity. It is alleged that the officials of Sonamarg Development Authority even demolished tin shed without any reason or justification. The petitioner also claims to have filed an FIR against the officials of the Sonamarg Development Authority for unnecessarily interfering in the construction despite the fact that they had no legal authority to do so.

3. Having failed to persuade the officials of Sonamarg Development Authority not to interfere with his legitimate activity of raising construction on his own land, the petitioner filed the instant petition before this court, seeking *inter alia* direction to the respondents to allow him to raise construction of his residential house on the subject land strictly in terms of the building permission granted by the Block Development Officer, Gund.

4. On being put on notice, the respondents have filed their affidavit and have taken the stand that though the subject land where the petitioner intends to raise construction of residential hut in terms of the building permission granted by Block Development Officer, Gund does not fall in the local area for which the Sonamarg Development Authority has been constituted, yet the Master Plan includes the areas adjoining to the local area and therefore the constructions in such areas are also regulated by the Sonamarg Development Authority.

5. Having heard learned counsel for the parties and perused the material on record, it is necessary to first set out relevant provisions of the J&K Development Act 1970. (I) Section 2(e), "Local Area", (II) Section 3, and Section 4.

> ***2. Definitions***.- *In this Act, unless the context otherwise requires,-*
> *(a), (b), (c), (d), ……..*

(e) "Local Area" means any area declared to be a local area under sub-section (1) of Section 3;

3. *Declaration of local area and constitution of Development Authority.—*

(1) As soon as may be after the commencement of this Act, the Government may, by notification in the Government Gazette, declare any area to be local area for purposes of this Act and constitute therefor an authority to be called the Development Authority hereinafter referred to as the Authority.

(2) The Authority shall be a body corporate by the name of the Local Area having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall in the said name sue and be sued.

4. Constitution of Sonamarg Development Authority.— *In exercise of the powers conferred by sub-section (1) of Section 4 of the Jammu and Kashmir Development Act, 1970 (XIX of 1970), the Government hereby direct that the Sonamarg Development Authority constituted vide notification S.R.O. 305, dated 11.09.2003, shall consist of the following members, namely**:--***

1.	Hon'ble Chief Minister	Chairman
2.	Hon'ble Tourism Minister	Vice-Chairman
3.	Hon'ble Minister of State for Tourism	Member
4.	Financial Commissioner, Finance Dept	Member
5.	Principal Secretary/Secretary to Government, Planning and Development Dept.	Member
6.	Commissioner/Secretary to Government, Public Works Department	Member
7.	Secretary to Government, Tourism Department	Member
8.	Divisional Commissioner, Kashmir	Member
9.	Deputy Commissioner, Srinagar	Member

The members of the Authority shall hold the office for a period of two years from the date of issue of this notification.

By order of the Government of Jammu and Kashmir.

(Sd.)……
Najamus Saqib,
Secretary to Government,
Tourism Department.

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 here under:-

> *"**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.

(RAJESH SEKHRI)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
18.11.2024
Aamir

Whether the order is speaking Yes/No

Whether the order is reportable Yes/No

HIGH COURT
JAMMU & KASHMIR AND LADAKH

Amir Rashid Sofi
I attest to the accuracy and
authenticity of this document

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