

Government of Jammu and Kashmir
Department of Law, Justice and Parliamentary Affairs
Civil Secretariat
Srinagar.

No. LD (Opn)2020/199-TSM

Dated: 01 .12.2020

Public Notice.

Subject: - OWP No.48/2010 titled Pahalgam Peoples Welfare Organization V/s State of J&K and Others.

The Hon'ble High Court vide its order dated **12.10.2020** passed in the above titled case *inter alia* issued certain directions for protection of State land from encroachers and illegal occupants. The excerpts of the relevant paragraphs of the order dated 12.10.2020 are reproduced herein under for information of the general public:-

“03. So far as Government land is concerned, the Supreme Court has repeatedly enjoined upon the State Machinery to protect the land from encroachers and illegal occupants. Disposal of the State Land can only be by a fair, transparent and open process.

19. Lessees whose leases have expired and continued to occupy the Government land have no right to do so. Disposition of the public property can only be effected in accordance with the law laid down by the Supreme Court by a public and transparent methodology.

20. In law even renewal of leases are not granted as a matter of right. There is no such plan for renewals in place.

22. Public lands are being exploited for commercial profits by those who have no right to do so. All of this has to stop forthwith.

23. In case immediate action is not taken and the public property retrieved from the illegal and unauthorized occupants, it has to be presumed that the respondents are in collusion and complicit with the illegal acts. It may be noted that such continued occupation of the public property may tantamount to criminal offences under the Indian Penal Code.

25. It needs a mention here that in case any documents stand received from any person(s), the same shall be scrutinized by the concerned authorities in accordance with law.

26. We also find that in case after case applications are being made for building permissions. On several occasions, the request is couched as a permission for renovation / repairs. On many

occasions, we find the ruse of damage on account of snow or fire is put forth under the shield of the permission so obtained, large scale unauthorized constructions, expansions and encroachments are being effected. Most of these are being sought and carried out by persons who have no right in the lands at all.

27. It is absolutely imperative to check this illegal activity as the unauthorized construction in this eco-fragile area is irreversibly damaging the environment. The damage is such that it cannot be compensated monetarily. Not only the present populace, but the generations to come will have to pay the price.

28. We, therefore, propose to issue the directions regarding the manner in which applications for the above permission shall be made. It is directed that, in addition to the requirements made in the applicable law, all applications for sanction of building/ construction/ renovation/ repairs in any building shall be accompanied by the following:

(i) an affidavit by the applicant that he / she is not in illegal occupation / possession of any public land/ forest land in the entire Union Territory of Jammu & Kashmir as well as Ladakh

(ii) Self authenticated copies of all documents establishing legal right of ownership over the land on which construction/ repairs / renovation is proposed.

(iii) Certificate from the Deputy Commissioner and DFO concerned that the land is not public land and forest land.

(iv) Copy of original sanctioned plan with all documents of original sanction, previous permissions for additions / repairs / renovation;

(v) Videography and photographs of the land; existing building (full exterior and interior)

(vi) Complete details (including exact location) of what is proposed to be undertaken which shall also be plotted on a site plan.

(vii) If request is favourably considered, then on completion of the work, completed site plan with color marking of work undertaken; videography and photos of the completed work. (viii) The concerned authorities shall at all times have full access to the property to undertake its inspection.

(ix) In no case will permission(s) be granted to persons having no right, title or interest to occupy the land in question.

(x) Persons in illegal occupation of the public lands must handover such lands to the Government authorities.

Asst
[Signature]

(xiii) This order shall govern all lands and properties in the Union Territories of Jammu & Kashmir as well as Ladakh.”

Accordingly, through the medium of this public notice as published on the official website of Department of Law, Justice & PA. (www.jklaw.nic.in), attention of the general public is invited towards the afore-said order dated 12.10.2020 (copy enclosed) passed by the Hon'ble Court for their information and awareness.


01.12.20

Deputy Legal Remembrancer,
Department of Law, Justice and Parliamentary Affairs.

S. No. 201
Advance List

IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

OWP No. 484/2010

(Through Video Conferencing)

Pahalgam Peoples Welfare Organization

.... Petitioner

Through: None.

v.

State of J&K and others

.... Respondent

Through: Mr. B. A. Dar, Sr. AAG.
Mr. M. A. Chashoo, AAG.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

ORDER
12.10.2020

01. A report dated 09th of October, 2020 has been filed by the respondents 2 and 3 accompanied by affidavits of Mr. Kuldeep Krishan Sidha, Deputy Commissioner, Anantnag, and Mr. Mushtaq Ahmad Simnani, Chief Executive Officer, Pahalgam. Perusal thereof would show that the respondents have taken no effective steps at all with regard to protection and preservation of the Government lands.

02. Lessees whose leases have long expired are continuing to occupy the State land. The Pahalgam Development Authority appears to have no record of the leases. Encroachers are also continuing with impunity on the

04. In this regard, as back as in 1987, in the judgment reported at (1987) 2 SCC 295 *Sachidanand Pandey v. State of W.B.*, the Supreme Court held thus:

“40. On a consideration of the relevant cases cited at the Bar the following propositions may be taken as well established: State-owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.”

(Emphasis by us)

05. In the pronouncement reported at (2007) 8 SCC 75 *Aggarwal & Modi Enterprises (P) Ltd. v. NDMC*, it was held as follows:

“23. Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e. it should be for public purpose and in public interest. Invitation for participation in public auction ensures transparency and it would be free from bias or discrimination and beyond reproach.”

(Emphasis by us)

“89. In conclusion, we hold that the State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good.”

(Emphasis by us)

07. Recently in the judgment reported at *(2018) 6 SCC 1 Lok Prahari v. State of U.P.*, the Supreme Court observed as follows:

“27. In Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1, while considering the allocation of 2-G Spectrum, this Court observed that as natural resources are public goods, the “Doctrine of Equality” which emerges from the concepts of justice and fairness must guide the State in determining the actual mechanism for distribution of natural resources.”

(Emphasis by us)

08. We may usefully extract the principles laid down by the Division Bench of the Delhi High Court in the pronouncement reported at *(2005) 123 DLT 154 Aggarwal & Modi Enterprises v. NDMC* [which stands upheld by the Supreme Court in *(2007) 8 SCC 75*], as follows:

“40. The principles which can be culled out from the aforesaid decisions are the following:

(a) The demarcated approach for disposal of public property, in contradiction to the disposal of private property is that it should be for public purpose and in public interest.

ensure maximum public participation and a reserve price. This also ensures transparency and such an auction would be free from bias or discrimination and thus beyond reproach.

(e) Private negotiations should always be avoided as it cannot withstand public gaze and cast reflection on the Government or its official and is also against social and public interest.

(f) In exceptional cases, the authorities may depart from public auction or tender process and even dispose of the property at lower price than the market price or even for a token price. However, resort to this process can be taken only to achieve some defined constitutionally recognized public purpose, one such being to achieve the goal set out under Part-IV of the Constitution of India.”

(Emphasis supplied)

09. We may also usefully extract the observations of the Delhi High Court in the judgment reported at **(2016) 234 DLT 409 Indian Hotels Co. Ltd. v. NDMC** as follows:

“50. The Council as a juristic entity would be the New Delhi Municipal Council and having perpetual succession and common seal, this juristic entity would have the power to acquire, hold and dispose of property. The members referred to as the Council under Section 4 would not be the juristic entity. They would be akin to the Board of Directors or the Governing Council of a company/society. The Chairperson of the Council is the one who performs the ministerial act of executing the required document concerning the immovable property belonging to the Council: the juristic entity. But this would be subject to the sanction of the

would be obliged on the principle of a Trust to obtain the best price while creating any interest in its property in favour of a third party. *It is the inherent right of every proprietor to secure maximum consideration for his property in all transactions, apart from transactions where the law limits consideration that can be charged by the proprietor, for any public purpose or in public interest. In the case of governmental bodies like the NDMC, the implicit right of a proprietor to maximize consideration for its property is also a duty since these bodies own and transact property in a fiduciary capacity for the general public. A similar view has been expressed by the Supreme Court in the decision reported as (2012) 3 SCC 1 Centre for Public Interest Litigation v. Union of India, wherein the Supreme Court held that the doctrine of equality enjoins that the public is adequately compensated for the transfer of natural resources and/or their products to the private domain. Thus, in exercising its right/discharging its duty to secure maximum consideration for grant of licence in relation to property bearing No. 1, Man Singh Road, New Delhi, NDMC is within its power to ensure that such measures are adopted by it which fetch the maximum revenue. As a consequence of NDMC's proprietary right and fiduciary duty to secure maximum consideration for public property, Section 141(2) of the NDMC Act, 1994 must be interpreted to include within its ambit all transactions involving immoveable property and the grant of licences cannot be dehors Section 141(2) of the NDMC Act, 1994. A harmonious construction of Section 141(1) and 141(2) of the NDMC Act, 1994 supports the view that it is incumbent on the NDMC to sell, lease, let out or otherwise transfer any immoveable property at the value at which such immoveable*

Act, 1994 provides the necessary condition of securing adequate compensation, which represents the fiduciary duty of the NDMC to the general public, to be fulfilled while disposing off the property as per Section 141(1) of the NDMC Act, 1994.”

(Emphasis supplied)

10. As back as in 1997, the judgment reported at **(1997) 1 SCC 388 M. C. Mehta v. Kamal Nath and others**, the Supreme Court had authoritatively laid down the law and held thus:

“34. Our legal system - based on English Common Law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea- shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.”

11. The above law binds this Court.
12. In our order dated 01st of October, 2020, we have noted as follows:

“4. It is stated in the compliance report that 75 parties are in occupation of 75 plots comprising of 79 kanals 8 marls 7 Sirsai and 4 sft. out of which 63 kanals 18 marlas 1 Sirsai and 5 sft. has been leased out by the Government and 15 kanals and 10 marlas and 6 Sirsai are encroached upon by different persons. It is stated by Pahalgam Development Authority that it has no record of any grant of any lease.

5. It is further stated that the Chief Executive Officer, Pahalgam Development Authority has issued a series of public notices through the print media for the production of lease documents by the lessees.

6. It appears that none of these persons have come forward. These

- 13.** It is reported that the Deputy Commissioner, Anantnag, by order dated 22.08.2020 had constituted a Committee which is carrying out the physical verification for pinpointing the encroachments and identifying the particulars of the encroachers over State / Forest Land.
- 14.** It is reported that the directions have been issued to the Wildlife Warden, South Kashmir Division, Bijbehara, to submit the list of encroachments on the Wildlife Land.
- 15.** The above exercise shall be positively undertaken before the next date of hearing and action taken report shall be filed in this regard.
- 16.** It is further reported that the Pahalgam Development Authority has issued public notices through print media to all the owners of the existing structures to submit the complete site plans of their structures with photographs and allied documents within a stipulated period of ten days vide notice dated 07th of September, 2020.
- 17.** The stipulated period of ten days has expired now. Notices have been issued through print media. Therefore, the matter would have been brought within the notice of all persons occupying land in the Pahalgam. In case the site plan with photographs and allied documents which would include lease deed / permission / sanction, has not been submitted to the concerned authorities, it has to be presumed that these are the persons encroaching on the Forest / Government Land.
- 18.** The Pahalgam Development Authority and the Revenue Department shall forthwith shall take steps for completion of the above exercise and initiate steps for eviction of the unauthorized occupants in accordance with law and action taken report shall be filed before the next date of hearing.
- 19.** Lessees whose leases have expired and continued to occupy the Government land have no right to do so. Disposition of the public property can only be effected in accordance with the law laid down by the Supreme

- 22.** Public lands are being exploited for commercial profits by those who have no right to do so. All of this has to stop forthwith.
- 23.** In case immediate action is not taken and the public property retrieved from the illegal and unauthorized occupants, it has to be presumed that the respondents are in collusion and complicit with the illegal acts. It may be noted that such continued occupation of the public property may tantamount to criminal offences under the Indian Penal Code.
- 24.** Let an action taken report be filed by all the concerned authorities within six weeks from today.
- 25.** It needs a mention here that in case any documents stand received from any person(s), the same shall be scrutinized by the concerned authorities in accordance with law.
- 26.** We also find that in case after case applications are being made for building permissions. On several occasions, the request is couched as a permission for renovation / repairs. On many occasions, we find the ruse of damage on account of snow or fire is put forth under the shield of the permission so obtained, large scale unauthorised constructions, expansions and encroachments are being effected. Most of these are being sought and carried out by persons who have no right in the lands at all.
- 27.** It is absolutely imperative to check this illegal activity as the unauthorized construction in this eco-fragile area is irreversibly damaging the environment. The damage is such that it cannot be compensated monetarily. Not only the present populace, but the generations to come will have to pay the price.
- 28.** We, therefore, propose to issue the directions regarding the manner in which applications for the above permission shall be made. It is directed that, in addition to the requirements made in the applicable law, all applications for sanction of building/ construction/ renovation/ repairs in any building shall be

- (ii) Self authenticated copies of all documents establishing legal right of ownership over the land on which construction/ repairs / renovation is proposed.
- (iii) Certificate from the Deputy Commissioner and DFO concerned that the land is not public land and forest land.
- (iv) Copy of original sanctioned plan with all documents of original sanction, previous permissions for additions / repairs / renovation;
- (v) Videography and photographs of the land; existing building (full exterior and interior)
- (vi) Complete details (including exact location) of what is proposed to be undertaken which shall also be plotted on a site plan.
- (vii) If request is favourably considered, then on completion of the work, completed site plan with colour marking of work undertaken; videography and photos of the completed work.
- (viii) The concerned authorities shall at all times have full access to the property to undertake its inspection.
- (ix) In no case will permission(s) be granted to persons having no right, title or interest to occupy the land in question.
- (x) Persons in illegal occupation of the public lands must handover such lands to the Government authorities.
- (xi) The respondents must take immediate steps to retrieve the public lands from the unauthorised occupants.
- (xii) Action taken reports shall be filed by the revenue and forest authorities every six weeks in *PIL No.484/2010 Pahalgam Peoples Welfare Vs. State*; *PIL No.14/2012 Mohammad Rafiq Zargar v. State and Others*, *PIL No.404/2011 Court on its Own Motion v. State and others*; *PIL No. 19/2011 Prof. S. K. Bhalla Vs. State of J&K and others* and *PIL No. 22/2018 Harcharan Singh Vs. State of J&K and others*.
- (xiii) This order shall govern all lands and properties in the Union Territories

Development Authority, Jammu Development Authority and Srinagar Development Authority etc.), all municipal corporations (including Srinagar Municipal Corporation and Jammu Municipal Corporation, etc.), Divisional Commissioners, Principal Chief Conservator Forests, J&K for compliance.

29. Making of a false deposition/ declaration/ disclosure in any of the applications/ affidavits/ documents or and or obstruction to the authorities in implementing this order shall be treated as contempt of the orders passed by this Court.
30. Let the Principal Secretary Law of the Union Territories take steps of informing the public at large about the directions made by this Court.
31. Copy of this order be placed on the record of the cases mentioned in para 28(xii) above.
32. The Registry is directed to send copy of this order to all the concerned authorities including the learned counsel for the parties.
33. List on 19th of November, 2020.

(PUNEET GUPTA)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

SRINAGAR

12.10.2020

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