

# HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR

OWP No. 2017/2017

MP No. 01/2017

Date of decision: 30.12.2017

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Abdul Rashid Dar

vs.

State of J&K and others

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**Coram:**

**Hon'ble Mr. Justice Janak Raj Kotwal, Judge**

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**Appearance:**

For the appellant/petitioner(s) : Mr. Nisar Ahmad, Adv.

For the respondent(s):

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(i) Whether to be reported in  
Press, Journal/Media: Yes/No

(ii) Whether to be reported in  
Journal/Digest: Yes/No

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1. Learned counsel for the petitioner was heard at length and record on the file perused.
2. The private respondents have filed a suit under section 32 of the Land Revenue Act before the Deputy Commissioner, Pulwama for correction of revenue entry in regard to survey No. 258-old (294-new). It is contended by them that the said survey number is a 'gair mumkin khoul' (irrigation channel), which irrigates two-third of the total land of village, Tenghar including their land. It is alleged by them that the said land measuring 07 marlas has got mixed up with the petitioner's land comprised in Survey No. 171-old (341-new) and that under the garb of said wrong entries, the petitioner has blocked the irrigation channel by filling it up with earth and has put all the villagers in hardship.
3. In that suit, the Deputy Commissioner vide his order dated 25.09.2017 constituted a team of revenue officers/officials headed by Tehsildar, Pulwama for demarcation and verification of the suit land. By a subsequent order dated 28.11.2017, the Deputy Commissioner seems to have reconstituted the said team.

4. Petitioner by virtue of this writ petition, challenges the order dated 28.11.2017 (supra) and seeks a **mandamus** to the respondents not to act on the said order and a further **mandamus** directing the respondents not to effect any change in the entries in the respect of the land comprised in khasra No. 258-old (294-new).
5. Learned counsel for the petitioner argued vehemently that the suit filed by the private respondents is not maintainable as the same is hopelessly time barred so the team for demarcation could not have been constituted without first deciding the question of the maintainability of the suit.
6. No illegality can be said to have been committed by the Deputy Commissioner in constituting a team for demarcation of the land. It is important to note that in the plaint in the suit filed by the private respondents, it is contended by them that they got knowledge of the aforementioned fact only when the petitioner filled up the channel and blocked the flow of water. The question in regard to maintainability of the suit is to be decided in backdrop of such a plea taken in the plaint and in that the Deputy Commissioner was not required to decide the question of maintainability first as it would involve a mixed question of law and fact. No prejudice would be caused to the petitioner by effecting demarcation of the disputed piece of land (water channel) because he has a right to remain present at the time of demarcation of the land by the committee as also to file objections to the report of the committee. The demarcation of the land is an interlocutory measure in the proceedings to which no indulgence or interference by this Court can be sought.
7. Viewed thus, this writ petition has no merit and is **dismissed** in *limine*. The interim direction issued on 07.12.2017 is now vacated.

**(Janak Raj Kotwal)**  
**Judge**

**Srinagar:**  
30.12.2017  
Rakesh