

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- OWP No. 755/2018
CM No. 5824/2019
IA Nos. 2/2018, 3/2018 & 1/2018
c/w
CPOWP No. 74/2018
CPOWP No. 160/2018

Ashok Kumar, age 45 years,
S/o Sh. Hari Lal Lalhal,
R/o Village Kanthal, Tehsil Basohli,
At present
Chak Sona Nupa, Kathua.

.....Appellant(s)/Petitioner(s)

Through: Mr. Z. A. Shah, Sr. Advocate with
Mr. N. Saqib Suharwardy, Advocate
Mr. K. S. Johal, Sr. Advocate with
Mr. Javed Iqbal Balwan, Advocate.

Vs

1. State of Jammu and Kashmir, Respondent(s)
through Commissioner/Secretary to
Government, Revenue Department,
government of J&K, Civil
Secretariat, Jammu.
2. Deputy Commissioner, Kathua.
3. Sh. Rohit Khajuria, Deputy
Commissioner, Kathua.
4. Tehsildar (T), Kathua.
5. Director, Urban Local Bodies, Green
Belt, Jammu.
6. Chief Engineer, Irrigation, Jammu.
7. Executive Engineer, Town and
Drainage Division, Transport Nagar,
Yard No. 1, Narwal, Jammu.
8. Executive Engineer, Public Works
(R&B) Department, Division
Kathua.
9. Executive Engineer, Irrigation
Division, Kathua.
10. Chief Executive Officer, Municipal
Committee, Kathua.
11. Senior Superintendent of Police,
J&K, Kathua.
12. Station House Officer, Kathua.

Through: Mrs. Monika Kohli, Sr. AAG

Mr. Amit Gupta, AAG
Mr. Ravinder Gupta, AAG
Mr. Anuj Dewan Raina, Advocate.

Case:- OWP No. 369/2011
IA Nos. 2439/2013, 2413/2012, 242/2014, 1/2015, 2286/2013 &
1/2017

1. Lakshmi Devi, Age 47 years, W/o Late Sh.Appellant(s)/Petitioner(s)
Ashok Singh, R/o village Chak Sona Nupa,
Kathua.
2. Arjun Singh, Age 20 years, S/o Late Sh.
Ashok Singh, R/o Village Chak Sona Nupa,
Kathua.
3. Sonia Devi, Age 26 years, D/o Late. Sh.
Ashok Singh, R/o Village Chak Sona Nupa,
Kathua.
4. Anita Devi, 24 years D/o Late Sh. Ashok
Singh, R/o Village Chak Sona Nupa,
Kathua.
5. Rajni Devi, Age 22 years D/o Late Sh.
Ashok Singh, R/o Village Chak Sona Nupa,
Kathua.

Through: Mr. Z. A. Shah, Sr. Advocate with
Mr. N. Saqib Suharwardy, Advocate
Mr. K. S. Johal, Sr. Advocate with
Mr. Javed Iqbal Balwan, Advocate.

Vs

1. State of Jammu and Kashmir, through Chief Respondent(s)
Secretary J&K Government, Civil
Secretariat, Jammu.
2. Deputy Commissioner, Kathua.
3. Chief Engineer, Irrigation, Jammu.
4. Executive Engineer, Irrigation Division,
Kathua.
5. Director Urban Local Bodies, Green Belt,
Jammu.
6. Executive Engineer, Town and Drainage
Division, Transport Nagar, Yard No. 1,
Narwal, Jammu.
7. Executive Engineer, Public Works (R&B)
Department, Division Kathua.
8. Assistant Executive Engineer, Irrigation

Sub-Division, Kathua.

Through: Mrs. Monika Kohli, Sr. AAG
Mr. Amit Gupta, AAG
Mr. Ravinder Gupta, AAG

Case:- OWP No. 1539/2017
IA Nos. 1/2017, 4/2017, 3/2017 & 2/2017

1. Rajeshwar Singh, Age 75 years, S/oAppellant(s)/Petitioner(s)
Zafar Singh R/o Ward No. 3, Lane No.
3, Shiv Puri Tehsil and District Kathua.
2. Rajinder Singh Jasrotia, Age-63 years
S/o Lt. Sh. Isheri Singh, R/o Ward No. 3
Lane No. 3 Shiv Puri Tehsil and District
Kathua.

For and on behalf of Residents of
Shiv Puri and adjoining areas of Shiv
Puri Tehsil and District Kathua.

Through: Mr. Anuj Dewan Raina, Advocate.

Vs

1. State of Jammu and Kashmir, through Respondent(s)
Commissioner-cum-Secretary to the
Government, Irrigation and Flood
Control Department Civil Secretariat,
Jammu/Srinagar.
2. Deputy Commissioner, Kathua.
3. Chief Engineer, Irrigation, Jammu.
4. Executive Engineer, Irrigation Division,
Kathua.
5. Director Urban Local Bodies, Green
Belt, Jammu.
6. Executive Engineer, Town and Drainage
Division, Transport Nagar, Yard No. 1,
Narwal, Jammu.

Through: Mrs. Monika Kohli, Sr. AAG
Mr. Amit Gupta, AAG
Mr. Ravinder Gupta, AAG

Mr. K. S. Johal, Sr. Advocate with
Mr. Javed Iqbal Balwan, Advocate.

Case:- OWP No. 514/2018
IA Nos. 3/2018 & 1/2018

Ashok Kumar, Age 45 years, S/o Sh. Hari LalAppellant(s)/Petitioner(s)
Lalhal, R/o Village Kanthal, Tehsil Basohli,
at present Chak Sona Nupa, Kathua.

Through: Mr. Z. A. Shah, Sr. Advocate with
Mr. N. Saqib Suharwardy, Advocate
Mr. K. S. Johal, Sr. Advocate with
Mr. Javed Iqbal Balwan, Advocate.

Vs

1. State of Jammu and Kashmir, through Respondent(s)
Commissioner/ Secretary to Government,
Revenue Department, Government of
J&K, Civil Secretariat, Jammu.
2. Deputy Commissioner, Kathua.
3. Sh. Rohit Khajuria, Deputy Commissioner,
Kathua.
4. Tehsildar (T), Kathua.
5. Director Urban Local Bodies, Green Belt,
Jammu.
6. Chief Engineer, Irrigation, Jammu.
7. Executive Engineer, Town and Drainage
Division, Transport Nagar, Yard No. 1,
Narwal, Jammu.
8. Executive Engineer, Public Works (R&B)
Department, Division Kathua.
9. Station House Officer, Kathua.
9. Chief Executive Officer, Municipal
Committee, Kathua.

Through: Mrs. Monika Kohli, Sr. AAG
Mr. Amit Gupta, AAG
Mr. Ravinder Gupta, AAG
Mr. Anuj Dewan Raina, Advocate.

Case:- OWP No. 570/2018
IA Nos. 1/2018 & 3/2018

CM Nos. 6684/2019 & 6876/2019
IA No. 2/2018

Shiv Kumar, age 38 years, S/o Sh. Hari LalAppellant(s)/Petitioner(s)
Lalhal, R/o Village Kanthal, Tehsil Basohli,
At present Chak Sona Nupa, Kathua.

Through: Mr. Z. A. Shah, Sr. Advocate with
Mr. N. Saqib Suharwardy, Advocate
Mr. K. S. Johal, Sr. Advocate with
Mr. Javed Iqbal Balwan, Advocate.

Vs

1. State of Jammu and Kashmir, through Respondent(s)
Commissioner/ Secretary to
Government, Revenue Department,
Government of J&K, Civil Secretariat,
Jammu.
2. Deputy Commissioner, Kathua.
3. Sh. Rohit Khajuria, Deputy
Commissioner, Kathua.
4. Tehsildar (T), Kathua.
5. Director Urban Local Bodies, Green
Belt, Jammu.
6. Chief Engineer, Irrigation, Jammu.
7. Executive Engineer, Town and Drainage
Division, Transport Nagar, Yard No. 1,
Narwal, Jammu.
8. Executive Engineer, Irrigation Division
Kathua.
9. Executive Engineer, Public Works
(R&B) Department, Division Kathua.
10. Chief Executive Officer, Municipal
Committee, Kathua.

Through: Mrs. Monika Kohli, Sr. AAG
Mr. Amit Gupta, AAG
Mr. Ravinder Gupta, AAG
Mr. Anuj Dewan Raina, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
(29.02.2024)

(ORAL)

01. The controversy involved in the petitions being OWP Nos. 755/2018, 570/2018 and 514/2018 relates to land measuring 2 kanals and 9 marlas covered under khasra No. 149 min situated at Village Chak Sona Nupa, Kathua claimed to have been purchased by the petitioners pursuant to sale deed dated 05.12.1986, as also land claimed to have been vested unto the petitioners in OWP No. 369/2011 allegedly having been encroached upon and interfered with by the official respondents for construction of a drain who claimed portion/part of the said land to be owned by the Irrigation and Flood Control Department/respondent herein. The petitioner in OWP No. 1539/2017 are residents of the area where the drain has been/is constructed challenging in the petition the change of alignment thereof by the official respondents therein.

02. Record reveals that during the pendency of the writ petition OWP No. 755/2018, this Court passed the following order on 02.06.2018:-

“By virtue of order dated 24.04.2018 this Court was pleased to permit the petitioner to raise boundary/protection wall with a view to protect his property in question from further damage. This was supposed to be at the risk and consequence of the petitioner and was subject to the result of the petition.

The allegation of the petitioner is that pursuant to the order dated 24.04.2018 passed by this Court, when the petitioner started raising the wall in question, the Officers of the State came on the spot and demolished the construction which have been constructed till date and destroyed the material also.

In the present MP, the petitioner prays that appropriate direction be issued for ensuring compliance of the order dated 24.04.2018 and that the learned District Judge,

Kathua be directed to supervise the implementation of the aforesaid order.

Learned counsel for the respondents, on the other hand, stated that in the guise of the order dated 24.04.2018 passed by this Court, the petitioner has started raising construction on a piece of land which did not belong to him is in fact, belonging to the Irrigation Department. It was urged that the Irrigation Department owns the land to the extent of approximately 22 kanals and 16 marlas. It is stated that the Urban Environment and Engineering Department (UEED) was constructing a deep drain over the land belonging to the Irrigation Department.

It was suggested that most appropriate thing to be done in the present case is to order demarcation of the land in question so that the order of the Court passed on 24.04.2018 can be implemented in its letter and spirit. It is stated that while the petitioner would be within his right construct its wall in the spirit of the order passed by this court, yet the order did not permit in any manner the construction of the wall over the land belonging to the irrigation department.

Mr. K. S. Johal, learned Sr. Advocate, however, seriously disputed the factum of ownership of the Irrigation Department over that portion of land where the drain is sought to be constructed. It is stated that the said land is belonging to brother Shiv Kumar who has also filed a petition and is pending in this Court.

Having considered the entire matter, it appears that order passed by the Court permitting the petitioner to raise a wall to protect his property did not in any manner suggest that he could raise a wall over a land belonging to the Irrigation Department. In my opinion, things can be settled if demarcation is ordered so that the land claimed by the petitioner can be identified and the entire controversy can be put to rest.

It was suggested that if at all the demarcation is to be ordered, the same be ordered under the supervision of some independent officer.

It is, accordingly, ordered that the Divisional Commissioner, Jammu shall appoint an officer/officers to conduct the demarcation. The report whereof shall be

submitted within five days. The demarcation will be conducted with a view to identify 22 kanals and 16 marlas of land belonging to the Irrigation Department failing under Khasra No. 149 min as asserted by the learned counsel for the respondents as also 02 kanals allegedly owned by the petitioner.”

Insofar as, the demarcation *qua* 9 marlas of land supra claimed to be owned and possessed by the petitioner in OWP No. 570/2018 is concerned, though, the Court in terms of order (supra) provided that no demarcation be effected in view of the pendency of the LPA, yet it is being informed by the appearing counsel for the respondents that the said LPA stands dismissed.

03. Record reveals that though, a demarcation was conducted pursuant to the aforesaid orders of this Court and a report submitted before this Court, yet the said demarcation report has been objected and opposed by the petitioners in OWP No. 755/2018, OWP No. 570/2018 and OWP No. 514/2018, primarily, on the ground that the said demarcation was conducted without associating them in the process of demarcation and at their back.

04. In view of the aforesaid facts and circumstances and the nature of controversy involved in the instant petitions, it is deemed appropriate, as also in order to shorten the litigation and to resolve the controversy, to direct a fresh demarcation of the land of the petitioners, namely, Ashok Kumar, Shiv Kumar and Lakshmi Devi and others by constituting a team of experts by the Divisional Commissioner, Jammu for the purpose wherein the process of the said fresh demarcation, the petitioners shall also be associated therewith and after effecting

the demarcation as directed above, the official respondents shall proceed in the matter in accordance with the procedure prescribed with law.

05. The earlier demarcation conducted pursuant to the orders of this Court, which has been objected by the petitioners herein shall remain subject to the fresh demarcation as ordered above.

06. The aforesaid exercise shall be commenced by the respondent-Divisional Commissioner and concluded within a period of eight weeks from the date, a certified copy of this order is produced by the petitioners before the Divisional Commissioner, Jammu and after said demarcation a copy of the report thereof shall be provided to the parties herein.

07. *Disposed off.*

08. In view of the nature of issues raised in OWP No. 1539/2017 and reply filed thereto by the official respondents, inasmuch as in the light of the aforesaid order of demarcation, the instant petition shall stand disposed of.

CPOWP Nos. 74/2018 & 160/2018

09. In view of the disposal of the petitions as above, the contempt petitions accompanying the instant petitions shall also stand closed and contempt notice recalled.

10. *Disposed of.*

**(JAVED IQBAL WANI)
JUDGE**

JAMMU
29.02.2024
Shivalee

Whether the order is reportable : Yes / No
Whether the order is speaking : Yes / No