

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

OWP No. 730/2011

Reserved On: 6th of May, 2023
Pronounced On: 23rd of May, 2023

Mohammad Akram Dar & Ors.

... Petitioner(s)

Through: -

Mr Mohammad Ayoub Bhat, Advocate.

V/s

State of JK & Ors.

... Respondent(s)

Through: -

Mr Jehangir Ahmad Dar, Government Advocate.

CORAM:

Hon'ble Mr Justice Rajnesh Oswal, Judge.

(JUDGMENT)

01. The petitioners, who are the residents of the village Qasba Yar, District Shopian, have filed the present petition seeking directions to the respondents not to change, divert or take any water from Yari Kohal and further restraining the respondents from raising and completing the construction of new Kohal and the water of Yari Kohal be utilized for the purpose of irrigating the agricultural land of the petitioners and other residents of Village Yari Kohal, on the ground that the Yari Kohal is the only source of irrigation for the agricultural land of the petitioners and that the respondents, without any authority and justification, have started the construction of diversion of Kohal through the Irrigation Division Shopian, whereas the Yari Kohal is having limited and less water, which is sufficient only for the residents of the village Qasba Yar. It is further pleaded that in the event the respondents are not restrained from diverting the water to another village known as Donard, the land of the petitioners and other residents of the village Qasba Yar would become barren.

02. The reply stands filed on behalf of the respondents. The respondent Nos. 1 to 4, besides raising a preliminary objection with regard to the maintainability of the petition, have stated that the Dunaroo Canal was adopted by the Department in the year 1989-90 and the said Canal takes off from Bidnai Nallah at Shukroo. The said Nallah is a perennial one, drawing its discharges from various springs located in its catchment. Under a scheme for the improvement of the canals for irrigation of the land of the villages Dunaroo, Naserpora, Check Keller, Mastpora, Check Vishroo, Muqian, Gulab TAing, Check Phalipora, Moshwara, covering a cultivable area of 720 hectares (14400 Kanals), an amount of Rs. 31.60 lacs stands incurred ending 1996 on various works executed under the aegis of a scheme with an approved cost of Rs. 36.00 lacs. Due to shortage of funds and also due to turmoil, the canal remained unattended, which made the canal non-functional, as the canal got filled up with debris and the slips from the right side of the hillslope. A project report for revival of the existing defunct canal was submitted to the Government in May, 2008. The report was approved by the Central Government under its 'Accelerated Irrigation Benefit Programme' and the work was allotted in March, 2010 and commenced in November, 2010. The execution activities were stopped due to the winter season and resumed in May, 2011. The respondents have further pleaded that the canal has not been newly constructed, but had been owned by the Department since 1989-90. It is stated that about 6.5 Kms down the stream of Bidnai Nallah, Qasba Yar Khul takes off from the Nallah. The estimated discharge requirements of Dunaroo canal and Qasba Yar Khoul are 26 and 15 cusecs, respectively. It is further stated that there is sufficient water in the Nallah to cater to the needs of both the canals and as such, the allegation of shortage of water is baseless. It is also stated that the residents of the village Qasba Yar will be exposed to no suffering at all. The respondent No. 5, though has filed the objections separately, but on the same lines. The petitioners have placed on record the copy of the '*Rewaj Aabpashi*'.

03. Mr Mohammad Ayoub Bhat, the learned counsel appearing for the petitioners, argued that the diversion of the water from the Qasba Yar

Khoul would reduce the water, resulting in damage to the agricultural land and orchards of the petitioners. He further submitted that the respondents are otherwise under an obligation to provide proper irrigation facilities to the land of the residents of the village Qasba Yar.

04. *Per Contra*, Mr Jehangir Dar, the learned Government Advocate, appearing on behalf of the respondents, submitted that the project for revival of the canal has been undertaken after detailed studies and further that the water required by the villagers of Qasba Yar will not be reduced and the apprehension of the petitioners is baseless. He further argued that the petitioners cannot claim any vested right in whole of the water in the canal, as the same is the property of the Government and it is for the Government to ensure the proper irrigation facilities not only to the village of the petitioners, but also to other villages as well.

05. Heard and perused the record.

06. The petitioners have based their claim on the basis of '*Rewaj Aabpashi*'. It shall be apt to extract Section 3 of the Jammu and Kashmir Water Resources (Regulation and Management) Act, 2010, which is as under:

“3. Property of the Government – (1) Every water source in the State is, and shall remain, the property of the Government and any proprietary ownership, or any riparian or usage right, on such water resources vested in any individual, group of individuals or any other body, corporation, company, society or community shall, from the date of commencement of the Act, be deemed to have been terminated and vested with the Government.

(2) No person shall use any water from any source (surface or ground), or collect or extract any material from such water sources except in accordance with the provisions of the Act.”

A perusal of Section 3 of the Act of 2010, as reproduced hereinabove, reveals that every water source in the State is and shall remain the property of the Government and any proprietary ownership, riparian or usage right on such water resources vested in any individual, group of individuals or any other body, corporation, company, society or community shall, from the date of commencement of the Act, be deemed to have been

terminated and vested with the Government. Further, as per Section 4 of the Act of 2010, the Government has been vested with the responsibility to prepare the State Water Policy and Plan for the purpose of satisfying the demand of water for domestic use, agriculture, power, industry, etc. It is the categorical stand of the respondents that the Dunaroo canal was adopted by the respondents in the year 1989-90 and same is being revived with the funding and approval of the Central Government. The canal is being revived for the benefit of the other villages as well. The petitioners have no vested right to demand any particular amount of water, particularly when the respondents have already determined the requirement of different villages, as such, the action of the respondents for reviving the canal in order to cater to the needs of other villages cannot be termed as illegal, unauthorized and without any justification. Under article 39 of the Constitution of India it is the goal of the State to ensure that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. The respondents have undertaken the exercise to ensure fair distribution of the natural resources and no individual or group of individuals can claim any right to exclusive use of natural resources. More so, the respondents have already taken into consideration the requirement of water for the village Qasba Yar, as such, this Court is of the considered view that the apprehension of the petitioners is without any basis.

07. Viewed thus, there is no merit in the present writ petition. The same is, accordingly, **dismissed**, along with the connected CM(s). Interim direction(s), if any, subsisting as on date, shall stand vacated.

(Rajnish Oswal)
Judge

SRINAGAR
May 23rd, 2023
"TAHIR"

i. Whether the Judgment is reportable? Yes/No.