

S. No. 202
Advance List

IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

WP (C) PIL No. 01/2019

(Through Video Conferencing)

In Re Suo Moto Proceedings

.... Petitioner

Through: None.

v.

State of J&K and others

.... Respondents

Through: Mr. T. M. Shamsi, ASGI.
Mr. B. A. Dar, Sr. AAG.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

ORDER

03.09.2020

1. The instant matter is concerned with illegal religious structures come up by way of encroachment on public land i.e public streets, public parks and public places. This matter has engaged the attention of the Supreme Court wherein the following order was passed on 31.01.2018:

“Repeated orders have been passed by this Court with respect to the removal of illegal religious structures which have come up by way of encroachments on public land.

Now these matters are pending.

Vide orders dated 7.12.2009, the following directions have been issued:

“This Court on 29th September, 2009, after taking into consideration the letter dated 19th September, 2009, sent by the Union Home Secretary to the learned Solicitor General of India, we passed the following order:

"We have heard the learned counsel for the parties. Looking to the far-reaching implications and consequences of the orders of this Court, on the oral request of the learned Solicitor General of India, we deem it appropriate to implead all the States and the Union Territories

as respondents to this petition. The Registry is directed to issue notices to all the States and the Union Territories within three days. The Union of India is directed to supply the entire set of papers to all the Standing Counsel appearing for the State Governments and the Union Territories.

The States and the Union Territories may file replies within four weeks and the Union of India is granted liberty to file rejoinder within two weeks thereafter.

As an interim measure, we direct that henceforth no unauthorized construction shall be carried out or permitted in the name of Temple, Church, Mosque or Gurudwara etc. on public streets, public parks or other public places etc.

In respect of the unauthorized construction of religious nature which has already taken place, the State Governments and the Union Territories shall review the same on case to case basis and take appropriate steps as expeditiously as possible.

In order to ensure compliance of our directions, we direct all the District Collectors and Magistrates/Deputy Commissioners in charge of the Districts to ensure that there is total compliance of the order passed by us. They are directed to submit a report within four weeks to the concerned Chief Secretaries or the Administrators of the Union Territories who in turn will send a report to this Court within eight weeks from today.

List this matter for further directions on 7th December, 2009."

All the States and the Union Territories have been served. Despite service, most of the States and Union Territories have not filed affidavits as directed by this Court. In the interest of justice, we grant one more opportunity to the Chief Secretaries/Administrators of the respective States and Union Territories to file affidavits. Let the same be filed within six weeks, failing which the concerned Chief Secretaries and Administrators shall remain present in Court on the next date of hearing.

In case the Chief Secretaries and the Administrators have not issued circulars to all the Collectors and the District Magistrates of the Districts, it shall be issued within two weeks from today.

The Chief Secretaries, in consultation with the respective Governments are directed to frame the policy in respect of existing unauthorized construction of religious nature, which had already taken place. This Court directed the respondents to review the same on case to case basis. Let the policies be formulated by all the States and the Union Territories within four weeks from today.

We are reiterating that the Chief Secretaries, the concerned District Magistrates and the Collectors/Deputy Commissioners in-charge of the Districts must ensure total compliance of our order. Any breach in this respect shall be viewed seriously by this Court.

We direct the Chief Secretaries/ Administrators of all the States and Union Territories to circulate copies of the order dated 29th September, 2009 and this order to all the District Magistrates and Collectors/Deputy Commissioners, other public bodies and local bodies.

We direct the learned Standing counsel appearing for various States and the Union Territories to ensure that all copies of the affidavits are filed in this Court on or before 27th January, 2010 with an advance copy to the learned Solicitor General of India, who is requested to get all these affidavits tabulated and submit a report to this Court on or before 2nd February, 2010.

Place this petition for further directions on 4th February, 2010. Looking to the gravity of this matter, we direct that no order or direction inconsistent to our orders, shall be passed by any other Court in the country.”

Vide order dated 16.2.2010, the following directions have been issued:

‘In pursuance of the order of this Court dated 29th September, 2009, by which this Court directed that henceforth no unauthorized construction shall be carried out or permitted in the name of Temple, Church, Mosque or Gurudwara etc. on public streets, public parks or other public places, the affidavits of all the States and the Union Territories, except the State of Uttarakhand, have been filed. All the States and the Union Territories have taken necessary steps to ensure that no further unauthorized construction shall take place and Court’s directions are seriously and meticulously complied with.

The other part of the directions issued on 29th September, 2009, were that in respect of unauthorized construction of religious nature which has already taken place on public streets, public parks or other public places, the State Governments and the Union Territories were directed to review the same on case to case basis and take appropriate steps as expeditiously as possible. We do not find comprehensive and satisfactory affidavits as far as this direction of the order is concerned. Therefore, it has become imperative to direct all the States and the Union Territories to formulate comprehensive policy regarding the removal/ relocation/ regularization of the unauthorized construction within six weeks’ from today. The policy should clearly indicate within what period the States and the Union Territories are going to fully

comply with its policy to remove/relocate/regularize the unauthorized construction.

We also direct all the States and the Union Territories to identify unauthorized construction of religious nature on public streets, public parks and public places within six weeks' from today.

We direct the Chief Secretary of the State of Uttarakhand to file an affidavit within two weeks from today. In case the affidavit is not filed, the Chief Secretary shall remain present in Court on the next date of hearing.

We also direct all the Chief Secretaries of the States and the Administrators of the Union Territories to file further comprehensive affidavits within six weeks' from today.

The special leave petition is adjourned to 6th April, 2010."

To ensure the implementation of directions issued by this Court, consensus has been arrived at Bar and in our opinion, rightly, that the implementation of the order should be supervised by the concerned High Courts. We, consequently, remit the above matters to the respective High Courts for ensuring implementation of the orders in effective manner.

The concerned records be transmitted to the respective High Courts. The interim orders wherever passed, shall continue, until the matters are considered by the High Court. In case any clarification is required, it would be open to the parties to approach this Court.

The High Court will have the jurisdiction to proceed in the Contempt of any of the orders passed by this Court."

2. The aforesaid order came to be passed on a Miscellaneous Application No. 2166 of 2018 in SLP (C) No. 8519/2006 titled Union of India v. The State of Gujarat and others which was filed before the Supreme Court whereby the applicant sought implementation of the directions passed by the Court from time to time in respect of removal of illegal religious structures coming up by encroachment on public land.

3. We find that on 23rd of June, 2020, this Court made a reference of the order dated 28th of January, 2019 which is not forthcoming on the court file. The Registry shall trace out this order and place it on record.

4. The record of the case shows that the then Chief Justice had directed sending a copy of the communication dated 10th August, 2010, 13th of August, 2010 alongwith certified copies of the orders of the proceedings

dated 22.07.2010 and 14.09.2010 passed by the Supreme Court to the Chief Secretary to ensure compliance.

5. It appears that the record of Special Leave Petition, Interlocutory Application, contempt petition and affidavit filed before the Supreme Court was not available and a direction was issued to seek the same from the concerned Assistant Registrar of the Supreme Court of India.

6. It also appears that the Chief Secretaries of the States and Administrators of the Union Territories were directed to review the aforesaid encroachments on the case to case basis and take appropriate steps as expeditiously as possible.

7. Nothing has been filed before this Court.

8. We, therefore, direct as follows:

The Divisional Commissioner, Jammu, Kashmir and Ladakh shall obtain a report from all the Deputy Commissioners of all the illegal religious encroachments under the following head:

- (a) Location of the encroachment;
- (b) Area encroached;
- (c) Details of the encroacher.

9. The above information shall be complied within six weeks from today. The information shall be placed before the Chief Secretaries of the Union Territory of Jammu and Kashmir and Ladakh, who shall cause the matter to be considered by all the concerned and competent authorities and a policy decision taken.

10. The same shall be placed before us before the next date of hearing.

11. Mr. T. M. Shamsi, learned ASGI, accepts notice on behalf of Chief Secretary of the Union Territory of Ladakh and Mr. B. A. Dar, learned Sr. AAG, on behalf of the Chief Secretary of Union Territory of Jammu and Kashmir.

12. The Registrar General of this Court shall take steps for obtaining the copy of the Miscellaneous Application No. 2166 of 2018, SLP (C) No. 8519/2006 titled Union of India v. The State of Gujarat and others and other

relevant documents from the Supreme Court of India before the next date of hearing.

13. It appears that a separate PIL may have been registered in the Jammu Wing of this Court with regard to encroachment of religious structures in Jammu province. The Registrar General shall consolidate the PIL which may have been registered in the Jammu Wing for hearing with the present PIL.

14. A copy of this order shall be placed on the record of the PIL at Jammu as well.

15. Both the Public Interest Litigation petitions shall be listed on 09th of November, 2020 and shall be heard together through video conferencing.

(PUNEET GUPTA) (GITA MITTAL)
JUDGE CHIEF JUSTICE

SRINAGAR
03.09.2020
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