

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

*Reserved on: 20.05.2025
Pronounced on: 08.07.2025*

WP(C) 278/2023

...Petitioner(s)

- 1) Abdul Aziz Reshi age 70 years
s/o Ghulam Ahmad Reshi
- 2) Manzoor Ahmad Bhat age 60 years
s/o Late Lassi Bhat
- 3) Ab. Salam Reshi age 60 years
s/o Abdul Rahman Rshi
- 4) Abdul Gani Reshi age 80 years
s/o Late Abdul Rahman Reshi
- 5) Manzoor Ahmad Reshi age 33 years
s/o Late Ghulam Hassan Reshi
- 6) Gh. Ahmad Reshi age 71 years
s/o Late Abdul Rahman Reshi
- 7) Gh. Mohammad Rather age 62 years
Son-in-law of Wali Bhat
All residents of Chewa-Uller Tral,
District Pulwama.

Through: Mr. Shahrukh Dar, Adv.

Vs.

- 1) Union Territory through Commissioner ...Respondent(s)
Secretary Revenue Department Civil
Sectt., Srinagar
- 2) Deputy Commissioner, Pulwama
- 3) Additional Deputy Commissioner, Tral
Distt. Pulwama
- 4) Tehsildar Tral District Pulwama
- 5) Executive Engineer, Irrigation Division
Tral Pulwama.
- 6) Block Development Officer Tral
District Pulwama.

Through: Mr. Jahangir Ahmad Dar, GA.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

01. The petitioners, being aggrieved by the illegal actions on the part of the respondents, have, through medium of this petition, sought the following reliefs:

- A. Mandamus, directing official respondents to not construct a link road on the tract of land of irrigation Canals Falling under Survey No. 866, 915, & 936 of village Chewa-Ullar Tral which are recorded in revenue records.*
- B. Issue a writ of Mandamus, directing official respondents to start removing encroachments made on irrigation Canals and Daraabpashi under Survey No. 866, 915 & 936 of village Chewa-Ullar Tral without any further delay so that it can accommodate more water which in turn will help in agricultural activities and also avoiding destruction cause by floods.*
- C. Issue a writ of Mandamus, directing official respondents to preserve the Tract of land falling under No 866, 915, & 936 of village Chewa-Ullar Tral which is recorded as irrigation canal and Daraabpashi as per revenue records*
- D. Any other writ order or relief which this Hon'ble Court deems fit and proper in the circumstances of this case may also be passed in favour of petitioner as against the respondents.*

02. The brief facts of the case are that the Petitioner No. 1 claims to be owner in possession of land bearing Khasra Nos. 585 and 588 and petitioner No. 2 claims possession of land bearing Khasra Nos. 902 and 913. Petitioner Nos. 3 and 4 claim to be owners in possession of land bearing Khasra Nos. 292, 294, and 673. Petitioner No. 5 claims to be owner in possession of land bearing Khasra Nos. 613 and 611, having succeeded to the estate of his father, namely Ghulam Hassan Reshi. Petitioner No. 6 claims possession of land bearing Khasra No. 666. Petitioner No. 7 claims possession of land bearing Khasra Nos. 598 and 668 situated at Village Chewa-Ullar, Tehsil Tral, and District Pulwama.

03. The further case of the petitioners is that an irrigation canal exist over Survey Numbers 866, 915, and 936, which provide irrigation to the entire village, including the lands of the petitioners. However, it is alleged that, with a view to confer undue benefit upon certain influential persons whose land is otherwise unsuitable for any residential or commercial use, and with the active connivance of land mafias, the respondents, in

collusion therewith, are proceeding to undertake construction of a road over the said irrigation canal with the sole intent to artificially enhance the market value of such land.

04. The learned counsel, appearing for the petitioners submitted that the Village Welfare Committee, Chewa-Ullar, had lodged an online grievance seeking the removal of encroachment upon the irrigation canal and the recorded *DaraAabpashi*. However, instead of taking any steps to redress the grievance and remove such encroachment, the respondents, in complete disregard of their statutory obligations, have commenced construction of a motorable road over the said irrigation canal.
05. It is further contended that the respondents have preceded with the construction of the road by utilising the land falling under Survey Nos. 866, 915, and 936 of Village Chewa-Ullar. No action whatsoever has been initiated to prevent or restrain such illegal construction despite repeated representations and objections raised by the petitioners and other affected villagers.
06. Further, the Petitioners have instituted the present writ petition on the ground that the official Respondents have failed to take any action to remove the encroachment made upon the irrigation canal. It is further submitted that if the Respondents are permitted to proceed with the illegal construction of the road over the aforesaid land, the same shall result in irreparable loss and injury to the petitioners as well as the residents of the entire village, as it will not only cause substantial damage to agricultural activities but will also render the area vulnerable to flooding, thereby seriously jeopardizing the rights and livelihoods of the villagers.
07. Learned counsel further submitted that the ongoing construction over the irrigation canals will result in complete obstruction of the irrigation channels and thereby irreversibly impair the agricultural activities of the petitioners, who are wholly dependent upon these irrigation facilities for cultivation of their land.
08. Per contra, the reply stand filed on behalf of the respondents who have submitted that the Village Chewa-Ullar is a revenue village situated within Tehsil Tral, wherein a connecting road exists under Khasra No. 678, recorded in the revenue records as *Gair Mumkin Rasta* to the extent

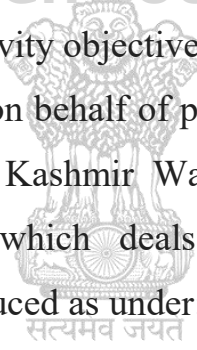
of 3 Kanals and 12 Marlas, leading towards the northern side up to the habitation of Razaq Shah, Tral-e-Bala. Additionally, another road link is recorded under Survey No. 930 as *Gair Mumkin Rasta* to the extent of 1 Kanal and 18 Marlas, leading towards the southern side, which provides ingress and egress to the inhabitants for both domestic purposes as well as for agricultural and horticultural activities.

09. It is further contended that between these two Khasra numbers, a *Gair Mumkin Darrah* (drain) exists in the revenue records under Khasra No. 915, measuring approximately 10 Kanals. The construction of the road is stated to have established effective connectivity between farms, fields, markets, and households, thereby facilitating the transportation of agricultural produce. Respondent have taken a further stand that due care has been taken to ensure the passage for flow of irrigation water, so that sufficient water continues to be available to the cultivators.
10. It is submitted that the site was visited by the concerned authorities, and directions were issued to the officers of the Irrigation Department as well as the Rural Development Department to maintain the irrigation drain in a manner that would not occasion any difficulty to the farmers in irrigating their lands. It is contended that the local farmers and other residents have expressed satisfaction and welcomed the development of the road, which would enable easier transportation and better returns for their produce, while also improving connectivity with the Razaq Shah habitation.
11. Learned counsel for respondents further submitted that certain encroachments had earlier been made by some individuals upon the *Gair Mumkin Rasta*, and attempts were made to resist eviction proceedings; however, prompt action was taken by the administration, resulting in removal of the encroachments and uprooting of trees, thereby paving the way for construction of the road by the Rural Development Department in furtherance of public interest.
12. It has been urged that being the custodian of land (state/*Shamilaat*), the Revenue Department is under a statutory obligation to remove encroachments in the interest of the Government and the general public. In this regard, a representation was indeed received from the Village

Welfare Committee, Chewa-Ullar, seeking demarcation and removal of encroachments. Following proper demarcation, eviction proceedings were undertaken to restore the land to its original status. The construction of the road is asserted to have been carried out exclusively to facilitate the public at large, and not for the benefit of any particular individuals or influential persons as alleged.

13. It has also been submitted that the up-gradation and development of the road have been undertaken by the Rural Development Department for the welfare of the residents and to provide improved transportation facilities. A portion of land under Khasra No. 915 has been utilized to ensure ingress and egress, and to secure connectivity of the approach road, which is also stated to be beneficial for excavation work required to maintain smooth flow of irrigation water.
14. The respondents have further contended that the administration is committed to provide both, better road infrastructure and adequate irrigation facilities so as to enhance agricultural and horticultural productivity in the area.
15. The record reveals that another set of reply has been filed on behalf of the respondent no. 5. The respondent no. 5 has taken a specific stand that the water course under contention, is a community khul (zamindari khul) which is not under the control or maintenance of the Department. Consequently, respondent no.5 has neither initiated, executed nor granted any clearance for the construction of the road over the said water course, nor has it participated in or facilitated any such activity. Thus, no violation of law or infringement of fundamental rights can be attributed to respondent no. 5 as it has no jurisdiction in respect of the water course in question, which is not maintained by the Jal Shakti (I&FC) Department, Srinagar. The matters relating to any alleged encroachment, conversion or construction pertain to other respondents and as such, no illegality or irregularity has been committed by the respondent no. 5 in the matter.

LEGAL ANALYSIS:

16. Having heard learned counsel for the parties and perused the pleadings and material on record, this Court is of the considered opinion that the controversy at hand arises out of the construction of a road known as Pushar Road, portions of which traverse land recorded as Gair Mumkin *Khul*. The petitioners assert that such construction impairs their irrigation rights and is actuated by malafides to benefit a few influential individuals, whereas the respondents contend that the action is in furtherance of public interest and that irrigation facilities have not been affected. The record discloses that the land in question was partly encroached upon by the petitioners and was retrieved pursuant to an eviction drive conducted by the Revenue Department, acting on representations made by the local Welfare Committee. The respondents have produced material to demonstrate that the eviction and construction were preceded by due administrative process and that the road was being developed in furtherance of rural connectivity objectives.
17. Learned counsel appearing on behalf of petitioners has placed reliance on Section 83 of Jammu and Kashmir Water Resources (Regulation and Management) Act 2010, which deals with the power to remove obstruction, which is reproduced as under:
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- “83. Power to remove obstruction.***
- (1) No person shall encroach upon, or cause any obstruction to, an embankment or slope thereof or the water way of any water source.”***
- (2) The prescribed authority, or any other person authorized by him in this behalf, may issue an order to the person making encroachment or causing obstruction or having control over any such encroachment or obstruction to remove such encroachment or obstruction within the time to be specified in the order.***
- (3) If within the time so specified, such person does not comply with the order, the prescribed authority or the officer authorized by him in that behalf, may remove such encroachment or obstruction and if the person to whom the***

order was issued does not, when called upon, pay the expenses involved in such removal, such expenses shall be recovered from him as arrears of land revenue.

(4) In removing the encroachment or obstruction, the prescribed authority or such officer as authorized by him to remove such encroachment or obstruction may, if necessary, requisition the help of the police.

18. In the present case, the record reveals that the action undertaken by the respondents, including the removal of the petitioners' occupation over the disputed portion, was carried out pursuant to such statutory powers and in furtherance of protecting public resources. No material has been placed on record to establish that the exercise of this power was arbitrary or in derogation of the procedure prescribed under the Act. Therefore, the reliance placed by the petitioners on the cited judgment does not advance their case and instead reinforces the respondents' lawful authority to remove such encroachments in the manner provided by statute.
19. In the considered opinion of this Court, the formulation and execution of road development projects, including the determination of road alignment, must be founded upon a rigorous and comprehensive process of technical examination, data collection, feasibility analysis, and evaluation of all viable alternatives. Such infrastructure decisions are inherently complex and require the expertise of trained professionals who are best equipped to assess topographical, geological, environmental, and engineering parameters, along with public utility considerations. It is a settled principle of law that matters involving technical expertise and policy decisions are to be left to the domain of qualified authorities, and the Court, while exercising its power of judicial review, does not assume the role of an appellate authority over technical decisions, unless they are manifestly arbitrary, unreasonable, or in violation of constitutional or statutory mandates. Judicial restraint is especially warranted where the subject-matter requires specialized knowledge, such as the alignment of highways or public roads, which is fundamentally a matter of technical feasibility and infrastructural prudence.
20. Accordingly, the Court refrains from adjudicating upon the merits of the proposed or existing road alignment, as it falls within the exclusive domain

of the concerned technical bodies and expert authorities entrusted with the planning, execution, and implementation of such public projects. Only in cases where a decision is shown to be actuated by malafides, or is so irrational that no reasonable expert could have arrived at it, would the Court be justified in exercising its writ jurisdiction. In the absence of such compelling grounds, no interference is called for in the expert-driven decision regarding the road alignment.

21. This court relies upon the observation made by Hon'ble Apex court in a case titled as **Union of India vs D. Kushala Shetty reported as (2011(12)SCC 69)**:

“24. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would sub serve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved.”

22. The settled principle that the Court ought not to substitute its opinion for that of technical experts, finds further affirmation in the judgment of the Hon'ble Supreme Court in **G. Narsing Rao (D) Through LRs v. NHAI &**

Anr, SLP (C) Nos. 9314–9315/2022, decided on 08.06.2022 wherein the Hon'ble Court has dismissed the SLP and observed as under:

“Infrastructure projects involve complex technical and policy considerations. Judicial interference is warranted only when the decision is arbitrary, unreasonable or violative of statutory provisions not merely because another view is possible.”

22. Further, Kerala High Court has made similar observation in case titled *G. Whabuddin Vs state of kerala* reported as *2024 SCC ONLINE KER 6250*, which reads as under:

Principles laid down in the precedents referred above are beyond any doubt relevant in deciding the issue involved in these appeals. Scope of judicial review in the case of technical matters related to infrastructure projects like alignment is extremely limited. Same is the case with acquisition of land also. We are conscious of the fact that delay in acquisition of land as well as implementation of projects involving huge expenditure would lead to multiplication of the financial burden, apart from delaying the enjoyment of benefits envisioned to be made available to the public with the implementation. It needs no mention that the cost of construction escalates with passage of time. A project contemplated at one point of time, when implemented several years later, would cause huge loss to the public exchequer. Overwhelming public interest involved in infrastructure development shall not be lost sight of while exercising the power of judicial review in cases calling in question various steps taken by the authorities concerned for implementation of projects. Balancing public interest vis-a-vis private interests appropriately is essential in such cases.”

CONCLUSION:

23. In the considered view of this Court, the principles articulated herein apply squarely to the facts of the present case. The record makes it evident that the alignment and execution of the road project have been preceded

by an administrative process involving technical assessment and due consideration of the requirements of public convenience and connectivity. The respondents have produced documents demonstrating that the project was undertaken pursuant to demands raised by local residents, and that necessary safeguards have been incorporated to ensure that irrigation facilities are preserved. The mere fact that a portion of the road passes over land recorded as Gair Mumkin Darrah (Khul) does not, by itself, establish any manifest arbitrariness or malafides in the determination of the alignment.

24. It is further significant that the petitioners themselves were in unauthorized occupation of the disputed portion, which was lawfully retrieved by the authorities in exercise of their statutory powers. The allegation that the road alignment was selected to serve private interests or to interfere with irrigation, has not been substantiated by any credible evidence on record. Rather, the material placed before the Court indicates that the decision was after consideration of technical feasibility and public benefit.
25. Applying the settled principles of judicial restraint in matters involving technical expertise, this Court finds no cogent ground to assume the role of an appellate authority over the planning and alignment of the road, nor any basis to hold that the decision suffers from such irrationality or impropriety as would warrant interference in writ jurisdiction.
26. It is further evident that the primary relief sought by the petitioners has already been substantially acted upon by the respondents, and no fruitful purpose would be served by keeping this petition pending any longer. Accordingly, this writ petition which is devoid of any merit and having been rendered infructuous with the efflux of time, is dismissed alongwith all connected applications.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR
08.07.2025
G. Nabi/Secy

- i. Whether the Judgment is Reportable: Yes/No
ii. Whether the Judgment is Speaking: Yes/No