

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 21.04.2025
Pronounced on: 28.05.2025

WP (C) No. 2132/2022

Haleema Tramboos & Ors.

... Petitioners

Through: Mr. A. H. Naik, Sr. Advocate with
Mr. Hakim Suhail Ishtiaq, Advocate

V/s.

UT of J&K and others

... Respondents

Through: Mr. Mohsin Qadri, Sr. AAG
with Ms. Maha Majeed, Assisting Counsel

WP (C) No. 1495/2022

Himalayan Welfare Organization - HWO

... Petitioners

Through: Mr. Arif Sikander, Advocate

V/s.

UT of J&K and others

... Respondents

Through: Mr. Mohsin Qadri, Sr. AAG
with Ms. Maha Majeed, Assisting Counsel

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

J U D G M E N T

WP (C) 2132/2022

1. Through the medium of the present petition, the petitioners have sought the following reliefs:

- a) Writ of Mandamus, commanding the respondents to allow the petitioners to utilize their property i.e. exchange plot No. 44 Pahalgam, by making construction upon the same.
- b) Writ of Mandamus, directing the respondents, especially Deputy Commissioner Anantnag to immediately complete the process which had been started in accordance with the evaluation committee of the

master plan regarding the settlement of the issue of exchange of plots made pursuant to Govt. order 60-C of 1944.

- c) Writ of Mandamus commanding the respondents especially DFO Demarcation to immediately submit the NOC with respect to the petitioners building permission case as per the zonal master plan of the area.
 - d) Any other order or direction, which this Hon'ble Court may deem fit and proper, in the attenuating facts and peculiar circumstances of the case, may also be passed in favour of the Applicants and against the respondents.
2. The case set up by the petitioners in the instant petition is that the Government vide Order No. 60-C of 1944 dated 10.01.1944 sanctioned exchange of proprietary land with the Government land situated at Noonwan, tehsil Pahalgam and one such exchange concerned Plot No. 44 measuring 5 Kanals and 12 Marlas and the petitioners herein claim to have lawfully acquired this plot pursuant to alienation permission granted by the Revenue Department vide Order No. Rev (LB) 314/89 dated 29.11.1989 with subsequent mutations duly attested thereof.

It has been also averred in the petition that in the year 2005–06, the petitioners herein intending to raise construction over the said land, applied to the concerned authority for building permission and the application was referred to various departments for issuance of NOCs and consequently several departments accorded their consent. The Town Planner, through communication dated 06.05.2006 addressed to the Chief Executive Officer, Pahalgam Development Authority, respondent 5 herein, confirmed that the proposed site falls within the hutment area of Ganeshbal, however, the Forest Department declined to issue the requisite NOC

and instead the respondent 7 herein vide letter dated 10.11.2006, directed respondent 6 herein to verify demarcation records and conduct field demarcation of the area.

5. It is next stated that during the pendency of the aforesaid building permission proceedings, the Pahalgam Master Plan 2032 was notified and with respect to plots exchanged under Government Order No. 60-C of 1944, the Master Plan stipulates that where no existing infrastructure exists, and where the Revenue Department has issued a clear NOC regarding title and the area is not under dense plantation, such plots may be permitted for tourism or other development.
6. The petitioners submit that the land in question is not under dense plantation and, therefore, qualifies for permission under the Master Plan and denial of NOC by the Forest Department in this regard is stated to be unjustified.
7. It is further stated that pursuant to the revised Master Plan, the Municipal Committee, Pahalgam, issued an NOC in favour of the petitioners vide letter dated 14.07.2021, however, the continued inaction of the Forest Department in granting NOC has stalled the building permission process of the petitioners' case.
8. It is also stated that the Divisional Commissioner, Kashmir, vide communication dated 10.05.2022 directed the Deputy Commissioner, Anantnag, to address the issues related to Government Order No. 60-C of 1944 and though the Deputy Commissioner, respondent 4 herein, was required to complete the exercise in line with the Master Plan, following approval of the

revised draft by the competent authority, yet nothing has been done thereof.

9. Reply has been filed to the petition by respondents 3 and 4 through the Deputy Commissioner, Anantnag; respondent 5 – Pahalgam Development Authority and the Forest Department.
10. In the reply filed on behalf of respondents 3 and 4 herein, the exchange of land as claimed by the petitioners has not been disputed. It has, however, been stated that the Forest Department does not recognize claims to plots covered under Government Order No. 60-C of 1944 where such plots fall within demarcated forest areas. It is further submitted that pursuant to the directions issued by the Divisional Commissioner, a committee was constituted, but further proceedings were halted in view of the order of status quo passed by this Court in WP(C) No. 1495/2022 titled *Himalayan Welfare Organisation v. Union Territory of J&K & Ors.*
11. In its reply, respondent 5 – Chief Executive Officer, Pahalgam Development Authority – contends that the land in question was alienated in favour of the petitioners for agricultural purposes. The Chief Town Planner has also reportedly confirmed that the plot falls under the category of 'Forest Use' in the revised Master Plan, thereby rendering construction impermissible.

Heard learned counsel for the parties and perused the record.

12. The reply filed by the Forest Department is central to the adjudication of the present petition. It reveals that in response to the communication dated 10.11.2006, the DFO, Demarcation Division, Srinagar, vide letter dated 09.11.2022, reported that as per

demarcation carried out on 18.03.2010, the land in question forms part of 'demarcated forest' falling in Compartment 34/L of Lidder Forest Division. The area is stated to be bounded by pillars 1, 2, 6, and 7, and contains 17 green Kail trees, one dry Kail tree, and additional Kail poles of different sizes. On this basis, the Forest Department has concluded that the area is under dense plantation and thus excluded from permissible development as per the Master Plan.

13. It is significant to mention here that this Court vide order dated 27.09.2022 had directed the respondents to expedite the decision on the petitioners' claim. In compliance therewith, the Forest Department rejected the petitioners' case by reiterating the grounds contained in its reply.
14. From a conjoint reading of the replies of the respondents filed to the petition, it emerges that the process of addressing issues related to Government Order No. 60-C of 1944, including the question of NOC issuance, was indeed set in motion but came to a halt owing to the status quo order passed in *Himalayan Welfare Organisation* petition (supra).
15. A perusal of the letter dated 18.03.2010 annexed to the Forest Department's reply discloses that the land in question measures 5 Kanals and 12 Marlas (equivalent to 30,464 sq. ft.), and contains only 17 numbers of kail green trees and one kail dry tree. Even as per the respondents' showing, the number and spread of trees do not substantiate the claim that the land is under 'dense plantation.' Significantly, the Forest Department does not dispute the legality or

validity of Government Order No. 60-C of 1944, but merely asserts that the land falls within forest area as per departmental records.

16. It is profitable to mention here that this Court, while dealing with an analogous issue in case titled as **Mohammad Shafi Tramboo & Ors. v. State of J&K & Ors.** [OWP No. 800/2017, decided on 03.11.2023], observed:

“19. Perusal of the record in general and in particular the report of the Tehsildar contained in page 28 of IA No. 02/2018 filed by the petitioners herein in particular manifestly certifies, authenticates the legitimacy, legality and correctness of order dated 60-C of 1944 dated 10.01.1944 being based on the report of the State Archives Repository, besides the nature, character and position of the plots taken over by the Government and those which were offered in exchange thereof to the owners of the said plots of land. Perusal of the extract of Master Plan 2032 annexed with the IA No. 02/2018 supra without any doubt as well endorses authenticity of Order No.60-C of 1944 dated 10.01.1944 besides making the construction permissible for exchanged plots except those under dense plantation on the internal page 5 of the said extract of said Master Plan 2032. Following is provided therein which being relevant and germane herein is reproduced hereunder:

Understanding the gravity of the matter, the Evaluation Committee held that the settlement of the area has already been done and forwarded to the Forest Department for authentication. The matter needs to be settled with the Forest Department for proper demarcation as per latest records. However, the Committee is of the opinion that the Govt. Order No. 60-C of 1944 issued for exchange of plots among the affected families in lieu of their proprietary land acquired by the Government at Pahalgam is a genuine order never changed or revoked by the subsequent governments. The exchange of plots shown as demarcated forest is a matter of updating forest records viz-a-viz revenue records after proper settlement. The Committee recommends that without any prejudice, all

exchange plots other than those under dense plantation shall be made permissible in the Master Plan-2032”

Therefore, from the aforesaid documents on record the validity and veracity of which is not being disputed by the respondents, making it clear that the land in question was excluded from the forest area way back in the year 1944 and that the Master Plan for Pahalgam makes the said land in question permissible for Tourism and other developments.

20. It is pertinent and significant to note here that order No. 60-C of 1944 dated 10.01.1944 came to be issued by the Government after having been approved by the Council which in terms of Section (5) and (6) of the Jammu and Kashmir Constitution Act, 1939 was vested with the powers of Civil Administration and the Government, ex-facie suggesting that the said Order dated 10.01.1944 has been issued by the competent authority and its legitimacy, legality or authenticity cannot be questioned by the respondents now after a considerable period of 80 years and deny the petitioners the benefit that has flown out of the said Government order in their favour more so in view of the admitted fact that the respondents have already issued No Objection Certificate(s) in favour of the plot holders adjacent to the land of the petitioners who as well had obtained the said plots in exchange in terms of order dated 10.01.1944 and on the said exchange plots, the said persons have raised and completed the construction of hotels and hutments and made them operational. The respondents thus, in this view of the matter cannot deny a similar treatment to the petitioners on any ground and for any reason whatsoever, in that, the said inaction of the respondents per-se is arbitrary and discriminatory and will not be countenanced by law.”

- 17.** Perusal of the record tends to show that the then Government was fully cognizant of the fact that the plots proposed to be allotted under Government Order No. 60-C of 1944 formed part of forest area and consequently, these plots were specifically excluded from

the forest domain and constituted into a separate revenue village, subject to payment of land price at regular rates. This fact, coupled with the further circumstance that the said plots have been rendered permissible for construction under the Pahalgam Master Plan 2032, leads to one inescapable conclusion that the land in question is no longer forest land. The mere reference in the records of the Forest Department to the land as “forest area”, likely on account of non-updation of revenue and forest records in conformity with Order No. 60-C of 1944, cannot be a valid ground to deny utilization of the land in accordance with the applicable Master Plan.

18. The plea of the Pahalgam Development Authority, in its reply, that the land in question was transferred to the petitioners for agricultural purposes, and hence, construction thereon cannot be permitted has, however, no factual basis. As observed earlier, the letter dated 18.03.2010 annexed with the reply filed by the Forest Department records the presence of only 17 numbers of kail green trees and one kail dry tree on the land in question and there is no material on record to demonstrate that the land was ever put to agricultural use. On the contrary, Government Order dated 29.11.1989 explicitly classifies the land as *Banjar-e-Qadim*. Here a reference to the judgment of this Court passed in case titled as ***Kuldeep Raj v. State of J&K* [2024 (2) SLJ 661]** would be relevant wherein following has been held:

As a matter of fact, with the approval of the Master Plan for a particular area, there is a general permission from the Government for change of land use into commercial or residential, as the case may be. That apart, the land falling within the limits of Municipal Corporation/Council is meant for development of urban areas and no such development could take place unless the land falling in the

municipal area is permitted to be used for developmental activities, whether it is commercial or residential or for the purposes of laying roads/lanes and drains.

Accordingly, the objection raised by the respondent Pahalgam Development Authority that the land having been alienated for agricultural purposes cannot be utilized for construction, is devoid of merit, as has been noticed above there is nothing on record to substantiate that the land in question was ever used for agricultural activity and on the contrary, the classification of the land as *Banjar-e-Qadim* and its permissibility under the Master Plan clearly negate such an objection.

19. In view of the foregoing discussion, the respondents, particularly the Forest Department, cannot be permitted to unilaterally defeat the vested rights of the petitioners arising from Government Order No. 60-C of 1944 and the subsequent alienation order issued by the competent Revenue authorities and the refusal to issue the requisite No Objection Certificate (NOC) on the ground that the land falls within a demarcated forest area or is reflected as 'forest use' in the revised Master Plan is legally untenable, particularly when the petitioners' title is valid, recognized, and remains unchallenged. Such a stand is not only contrary to the petitioners' vested rights but also undermines the object and mandate of the revised Master Plan, which expressly envisages consideration of such exchange of plots for developmental purposes, provided they are not under dense plantation and the title is unambiguous.
20. For what has been observed, considered and analysed hereinabove, the instant petition succeeds, as a consequence whereof the Deputy

Commissioner, Anantnag, respondent 4 herein, is commanded to immediately complete the process which had been started in accordance with the Evaluation Committee of the Master Plan regarding the settlement of the issue of exchange of plots made pursuant to Government Order No. 60-C of 1944 with further direction to the respondents particularly to the DFO Demarcation to immediately submit the NOC with respect to the petitioners' building permission case as per the Zonal Master Plan of the area to the concerned authority whereupon the said authority shall effectively accord consideration to the said case of the petitioners. The aforesaid exercise be concluded as expeditiously as possible preferably within a period of eight weeks from the date copy of this order is served by the petitioners upon the respondents.

21. Disposed of.

WP (C) 1495/2022

1. The petitioner, a society registered under the Societies Registration Act, has invoked the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking judicial review of *Government Order No. 60-C of 1944 dated 10.01.1944*. The petitioner has also challenged the **communication dated 10.05.2022** issued by respondent 14, Divisional Commissioner, Kashmir, to the Deputy Commissioner, Anantnag, whereby directions were issued to complete the exercise concerning the remaining plots exchanged in terms of the said Government Order, in accordance with the prevailing Master Plan. Further, the petitioner assails **Order dated 12.05.2022** of the Deputy Commissioner, Anantnag, whereby a team was constituted to execute the said directions. Lastly, the **Pahalgam Master Plan**

2032 is impugned to the extent it permits the conversion of forest land for non-forest purposes.

It is the petitioner's case that *Government Order No. 60-C of 1944* was issued in view of concerns over rampant deforestation in the Pahalgam area. The said order envisaged a scheme for land exchange, under which families whose land had been acquired by the Government were to be allotted alternative plots. It is, however, asserted that although several decades have passed since the issuance of the order, actual possession of alternative plots has not been handed over to the intended beneficiaries.

The petitioner further pleads that the forests in the Pahalgam area were formally demarcated only in the 1960s, well after the issuance of the said order and that recently, some individuals claiming to be beneficiaries of the 1944 scheme have approached the Divisional Commissioner contending that the plots earmarked for them fall within forest land and are, therefore, unusable.

2. The petitioner herein on the strength of the aforesaid case set up has sought the following reliefs:

1. Writ of Certiorari, to quash DO dated 10.05.2022 issued by the Office of Divisional Commissioner, Kashmir.
2. Writ of Certiorari, to quash DO dated 12.05.2022 issued by Office of Deputy Commissioner, Anantnag.
3. Writ of Certiorari, to quash the provisions enshrined at page 51 and 52 of the Master Plan Pahalgam – 2032 permitting conversion of forest land for non-forest purposes.
4. Writ of Certiorari, declaring Order No. 60-C of 1944 as void as its object is inconsistent with the provisions of the constitution and other laws of the country, as such non-est in law.
5. Writ of Mandamus, directing respondents to preserve the forest areas in its pristine.

6. Any other order or direction may be passed, as this Hon'ble Court may deem fit.
3. In essence, the petitioner challenges the validity of the Government Order No. 60-C of 1944, primarily on the ground that it contravenes Section 2 of the **Forest (Conservation) Act, 1980**, which mandates that no forest land shall be diverted for non-forest purposes without prior approval of the Central Government.
4. A plain reading of the instant petition, however, suggests that it may not be maintainable due to the petitioner's lack of *locus standi* and during the hearing of the present petition, as also the connected petition bearing WP(C) No. 1495/2022, a pointed query was raised by the Court regarding the petitioner's *locus* to maintain the petition and the learned counsel for the petitioner relying on judgment passed in case titled as "**Jasbhai Motibhaj Desai vs. Roshan Kumar, Haji Bashir Ahmed & Ors** reported in (1976) 1 SCC 671 and judgment passed in case titled as "**Janata Dal v. H. S. Chaudhary & Ors**" reported in (1992) 4 SCC 305 argued that a writ of *certiorari* can be issued even in exceptional circumstances, and hence, the present petition qualifies as maintainable on that ground.
5. With regard to *locus standi*, the Hon'ble Supreme Court in case titled as **Ghulam Qadir v. Special Tribunal**, reported in 2002 (1) SCC 33, held as under:

"38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in

public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid Article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea-change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dis-lodging the claim of a litigant merely on hyper-technical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his having not the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.”

Though the law regarding *locus standi* has been relaxed viz-a-viz cases in which by the act or omission of the State or any public authority injury is caused only to public interest, in such cases any member of the public acting *bona fide* and having sufficient interest can maintain a petition. The Apex Court in case titled as **S.P. Gupta & ors. v. President of India & ors., [reported as AIR 1982 SC 149]**, while discussing the scope of maintainability of petitions in public interest, has held as under:

“...If the State or any public authority acts beyond the scope of its power and thereby causes a specific legal injury to a person or to a determinate class or group of persons, it would be a case of private injury actionable in the manner discussed in the preceding paragraphs. So also if the duty is owed by the State or any public authority to a person or to a determinate class or group of persons, it would give rise to a corresponding right in such person or determinate class or group of persons and they would be entitled to maintain an action for judicial redress. But if no specific legal injury is caused to a person or to a determinate class or group of persons

by the act or omission of the State or any public authority and the injury is caused only to public interest, the question arises as to who can maintain an action for vindicating the rule of law and setting aside the unlawful action or enforcing the performance of the public duty. If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule of law, for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it. The Courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. The view has therefore been taken by the Courts in many decisions that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busy-body or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or a public authority by any citizen will induce the State or such public authority to act with greater responsibility and care thereby improving the administration of justice.”

Speaking for the majority **Bhagwati, J.**, (as he then was) stated as follows:

"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of person is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this

court under Article 32 seeking judicial redress for the legal ' wrong or injury caused to such person or determinate class of persons'".

6. Thus, petitions in public interest, termed as Public Interest Litigation (for short 'PIL') can be maintained where the impugned action of the State or any public authority results in a public injury or breach of public duty, even if no specific legal injury is caused to an individual or a determinate class of persons. Such petitions are maintainable at the instance of any member of the public acting *bona fide* and possessing sufficient interest in the matter. The courts have consistently held that in order to uphold the rule of law and ensure accountability in governance, the rigid rule of *locus standi* must be relaxed in cases where access to justice is sought for the enforcement of public duties or redressal of public wrongs. However, the petitioner must not be a mere busybody or meddlesome interloper but must demonstrate a genuine concern for the public interest and act without any oblique motive.
7. It is significant to mention here that filing of a Public Interest Litigation is governed by Rule 24 of the Writ Proceeding Rules, 1997 and in terms of Rule 24, a petition in public interest (PIL) can be maintained where the subject matter concerns issues of vital public importance, and where no individual or determinate group is directly aggrieved but the injury is caused to public interest at large. Such petitions may be instituted by any person, organization or body acting *bona fide* and having sufficient interest in the cause and they may be filed formally in the Registry or may even originate from communications such as letters or telegrams, or be initiated

suo moto by the Court. However, to prevent abuse of this liberalized rule of standing, strict procedural safeguards are prescribed, including mandatory affidavits, disclosure of petitioner's background and funding, and prior representations to authorities wherever feasible. However, record of the petition would manifestly demonstrate that the aforesaid essentials are missing in the instant case.

8. In view of above, the instant petition not being a public interest litigation, it can safely be said that the petitioner has no locus standi to maintain the present petition. Even assuming for the sake of argument that the petition is maintainable, no exceptional circumstances are made out to warrant this Court to *suo moto* treat the matter as a PIL, as has been prayed for by learned counsel for the petitioner, as the petitioner's core grievance is that the Government Order No. 60-C of 1944 violates Section 2 of the Forest (Conservation) Act, 1980, however, this contention is legally unsustainable as the Forest (Conservation) Act, 1980 is a central legislation which came into force on 25.10.1980 and pertinently, this Act did not apply to the erstwhile State of Jammu and Kashmir until its reorganisation under the J&K Reorganisation Act, 2019, pursuant to which the said Act was made applicable to the Union Territory of J&K w.e.f. 31.10.2019.

Furthermore, the erstwhile State of J&K had its own legislation—J&K Forest (Conservation) Act, 1997, which came into effect from 01.10.1997, therefore, the impugned Government Order of 1944, having been issued decades before the enactment or

enforcement of either of the above statutes, cannot be said to be in violation of the same, in that, it is a settled principle of law that retrospective application of penal or regulatory statutes is impermissible unless expressly provided.

Moreover, a perusal of the aforesaid Government Order of 1944 indicates that the possession of most exchanged plots was duly handed over to the beneficiaries, a fact that finds mention in the order itself and thus the petitioner's generalised assertions to the contrary are vague, unsubstantiated, and insufficient to disturb a long-standing administrative action.

The petition in hand appears to have been filed without due verification of the factual and legal position. The assertion that Order No. 60-C of 1944 was issued out of concern for increasing deforestation is factually incorrect. The said order seemingly had been issued with the specific objective of enabling the Government to take over privately owned lands in the Pahalgam Plateau and valley, with a view to preserving the scenic beauty of the area and facilitating its planned development. The casual and misconceived plea of the petitioner that Government Order No. 60-C of 1944 violates the provisions of the Forest (Conservation) Act, 1980, a legislation which was neither in force nor enacted at the relevant time, further underscores the petitioner's lack of *bona fides*. The attempt to retroactively apply statutory provisions to challenge a Pre-Constitutional administrative order reflects a clear absence of due diligence and undermines the credibility of the petitioner.

9. Viewed thus, the instant petition fails and is accordingly **dismissed** with costs of Rs.20,000/- to be payable by the petitioner and deposited before the Registrar Judicial of this Court within two weeks from today. Interim direction passed earlier by this court shall stand vacated.

(JAVED IQBAL WANI)
JUDGE

Srinagar
28.05.2025
N Ahmad

Whether the order is speaking: Yes
Whether the order is reportable: Yes

