

77



Government of Jammu and Kashmir,  
Forest, Ecology & Environment Department  
Civil Secretariat, Jammu/Srinagar

Consultant (Judicial),  
Hon'ble National Green Tribunal,  
Principal Bench, New Delhi.

No.FST-Lit/33/2023(7142037)

Dated.12-02-2024

Subject: O.A. No.93/2023 In re:News item published in Newspaper 'The Hindu' dated 04.02.2023 titled "19 families shifted after houses in J&K village develop cracks."

Sir,

With reference to the subject captioned above, I am directed to enclose herewith a copy of Action Taken Report in compliance to the directions passed by Hon'ble National Green Tribunal in Order dated 11.12.2023 in OA No. 93/2023 In re: News item published in Newspaper 'The Hindu' dated 04.02.2023 titled "19 families shifted after houses in J&K village develop cracks", with the request that the said position may kindly be placed before the Hon'ble Tribunal, for its kind consideration.

Yours faithfully,

  
(Vivek Modi)  
Special Secretary (Technical)  
12.02.24

Encls:As above.

Copy (with enclosures) to the:-

Shri G.M. Kawoosa, Additional Standing Counsel for Government of J&K in Hon'ble National Green Tribunal-Principal Bench, New Delhi, for information and necessary action.

**Action Taken Report in compliance to directions passed by Hon'ble National Green Tribunal in OA No.93/2023 In re: News item published in Newspaper 'The Hindu' dated 04.02.2023 titled "19 families shifted after houses in J&K village develop cracks".**

In compliance to the directions passed by the Hon'ble National Green Tribunal in the matter of O.A No.93/2023 titled In re: News item published in newspaper "The Hindu" dated 04.02.2023 titled "19 families shifted after houses in J&K village develop cracks", it is humbly submitted as follows:-

1. That the Hon'ble National Green Tribunal, on consideration of Action Taken Report submitted on 08.12.2023, passed Order on hearing the matter on 11.12.2023 as under:-

*".....We find that occupation of the land in question and raising of construction by the affected persons, has been allowed due to inaction, inefficiency or lack of monitoring or supervision on the part of UT and its authorities and stakes have been allowed to be created on the land in question for the reasons attributable to State's inaction. Hence, UT cannot absolve of its responsibility of compensating the people who have suffered loss or damages at the land in question for the reasons, not attributable to these persons, but man-made situations which also have arisen due to inaction on the part of UT and its authorities.*

*In such cases, prima-facie, we are of the view that UT is liable to pay compensation, to the extent, the damage has suffered by the people who have raised their structures on the land in dispute.*

*Mr. Dheeraj Gupta, Principal Secretary, at this stage, stated that Committee, headed by Chief Secretary constituted by Tribunal, may be allowed to re-look in the matter and take appropriate decision, founded on welfare and humanitarian ground, to the people affected for the reasons, not attributable to them and sought two weeks' time to do so.*

*Let the matter be re-examined and an Action Taken Report be submitted within two weeks.*

*List this matter on 13.02.2024."*

2. That a meeting to review the compliance of directions of the Hon'ble National Green Tribunal passed in O.A No.93/2023 In re: News item published in Newspaper 'The Hindu' dated 04.02.2023 titled "19 families shifted after houses in J&K village develop cracks" was held under the Chairmanship of Chief Secretary, J&K on 08.01.2024. The following decisions were taken in the meeting:-

1. *The inputs dated 07.12.2023 received from Expert Members will be referred to Public Works (R&B) Department for necessary action.*
2. *It was decided that a meeting of the Joint Committee constituted by the Hon'ble National Green Tribunal in the matter will be convened to discuss the issue regarding rehabilitation raised in the Orders of Hon'ble National Green Tribunal in the orders dated 02.11.2023 and 11.12.2023.*

A copy of the Record Note is attached herewith as **Annexure-A**.

3. Vide O.M No.FST-Lit/33/2023-02-Forest Department (7142037) dated 15.01.2024, a copy of record note of above meeting dated 08.01.2024 along with a copy of Minutes of Meeting dated 07.12.2023 received from Experts Members has been forwarded to Public Works (R&B) Department for further necessary action. Copy of the letter is attached herewith as **Annexure-B**.
4. That a meeting of Joint Committee along with concerned departments was also held under the Chairmanship of Chief Secretary, J&K on 08.02.2024.

The meeting was attended by the following Members of the Committee, apart from all concerned officers:-

1. Prof. J.S. Rawat, Kumaon University, Almora.
2. Dr. Khayingshing Luirei, Wadia Institute of Himalayan Geology, Dehradun.
3. Dr. Sandipan Mukherjee, G.B Pant National Institute of Himalayan Environment.
4. Dr. PG Jose, National Institute of Hydrology, Roorkee.
5. Dr. Ritesh Agarwal, Space Applications Centre, Ahmedabad.
6. Dr. Devendra Singh Rawat, National Institute of Rock Mechanics, Bangalore.
7. Dr. Narendra Sharma, CPCB, RO Chandigarh.

5. The detailed deliberations/copy of the Record Note is attached herewith as **Annexure-C**. It was decided in the meeting that the considerations and deliberations of the Committee may be placed before the Hon'ble Tribunal to provide guidance and

further directions on the manner in which the UT would be required to proceed further.

The matter is placed before the Hon'ble National Green Tribunal for kind consideration and further directions.

  
12.02.24



Government of Jammu and Kashmir,  
Forest, Ecology & Environment Department  
Civil Secretariat, Jammu/Srinagar

**Record Note of the meeting held under the Chairmanship of Chief Secretary, J&K on 08.01.2024 at 04.30 PM, to review the compliance of directions of the Hon'ble National Green Tribunal passed in OA No.93/2023 In re: News item published in Newspaper 'The Hindu' dated 04.02.2023 titled "19 families shifted after houses in J&K village develop cracks".**

A meeting to review the compliance of directions of the Hon'ble National Green Tribunal passed in O.A No.93/2023 In re: News item published in Newspaper 'The Hindu' dated 04.02.2023 titled "19 families shifted after houses in J&K village develop cracks" was held under the Chairmanship of Chief Secretary, J&K on 08.01.2024 at 04.30 PM in his office chambers at Civil Secretariat, Jammu.

The following officers were present in the Meeting:-

1. Financial Commissioner (ACS), Forest Ecology & Environment Department.
2. Administrative Secretary, Public Works (R&B) Department.
3. Divisional Commissioner, Jammu.
4. Deputy Commissioner, Doda.
5. Administrative Secretary, Department of Disaster Management, Relief, Rehabilitation and Reconstruction.
6. Administrative Secretary, Law Department.
7. Special Secretary (Tech.), Forest, Ecology and Environment Department.

At the outset, Financial Commissioner (ACS), Forest, Ecology & Environment Department apprised the chair and participants about the background of the case and the actions taken in pursuance to the directions passed by the Hon'ble National Green Tribunal in the matter from time to time.

The response received from expert members dated 07.12.2023, to letter dated 01.11.2023, seeking the views of the experts on the sufficiency of the proposals made by PW(R&B) Department regarding civil works was discussed. The view of the experts is reproduced as under:-

1. The design and cost approval for the proposed structures (retaining walls, breast wall and gabion structures) for Nai Basti and nearby areas in

*ML* *ES*

Thathri of Doda District, in Jammu and Kashmir is beyond the scope and expertise available with the Committee. However, the technical proposal could be evaluated by civil engineers. Therefore, the UT of J&K may constitute a committee of civil engineers to evaluate the same.

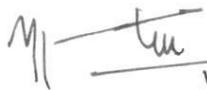
2. Removal of silt from the right bank of the Chenab River was originally not recommended by the Committee. Hence requirements of this work could be re-evaluated.

**Decision:** The inputs dated 07.12.2023 received from Expert Members will be referred to Public Works (R&B) Department for necessary action.

The orders dated 02.11.2023 and 11.12.2023 in the matter passed by Hon'ble National Green Tribunal, with regard to rehabilitation of affected persons was discussed in the meeting.

**Decision:** It was decided that a meeting of the Joint Committee constituted by the Hon'ble National Green Tribunal in the matter will be convened to discuss the issue regarding rehabilitation raised in the Orders of Hon'ble National Green Tribunal in the orders dated 02.11.2023 and 11.12.2023.

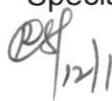
The meeting ended with a vote of thanks to the Chair.

  
12/1/24

(Dr. Harpreet Kaur)

Special Secretary (Technical)

No.FST/Lit/33/2023-02-Forest Deptt.

 Dated.12-01-2024

Copy to:-

1. Administrative Secretary, Public Works (R&B) Department.
2. Divisional Commissioner, Jammu.
3. Deputy Commissioner, Doda.
4. Administrative Secretary, Department of Disaster Management, Relief, Rehabilitation and Reconstruction.
5. Administrative Secretary, Law Department.
6. Private Secretary to Financial Commissioner (ACS), Forest, Ecology & Environment Department.
7. Stock file.



Government of Jammu and Kashmir,  
Forest, Ecology & Environment Department  
Civil Secretariat, Jammu/Srinagar

Annexure 'B'

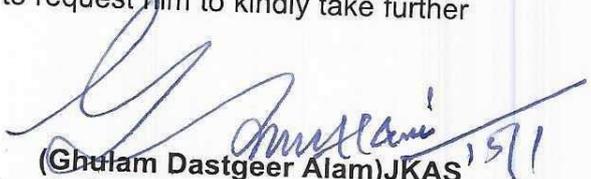
**MOST URGENT**

O.M No.FST-Lit/33/2023-02-Forst Department  
(7142037)

Dated.15-01-2024

**Subject:** Record Note of the meeting held under the Chairmanship of Chief Secretary, J&K on 08.01.2024 to review the compliance of directions of the Hon'ble National Green Tribunal passed in OA No.93/2023 In re: News item published in Newspaper 'The Hindu' dated 04.02.2023 titled "19 families shifted after houses in J&K village develop cracks".

The undersigned is directed to forward herewith a copy of record note of the meeting issued under endorsement No.FST/Lit/33/2023-02-Forest Deptt. Dated 12-01-2024 along with a copy of Minutes of Meeting dated 07-12-2023 received from Expert Members, regarding the subject cited above, to Administrative Secretary, Public Works (R&B) Department, and to request him to kindly take further necessary action in the matter.

  
(Ghulam Dastgeer Alam)JKAS  
Deputy Secretary to the Government

Administrative Secretary,  
Public Works (R&B) Department.

Encls:A/A.



Government of Jammu and Kashmir  
Forest, Ecology & Environment Department  
Civil Secretariat, Jammu/Srinagar

**Record Note of the meeting of the Joint Committee held under the Chairmanship of Chief Secretary, J&K on 08.02.2024 at 09.30 AM, in the matter of OA No.93/2023 In re: News item published in Newspaper 'The Hindu' dated 04.02.2023 titled "19 families shifted after houses in J&K village develop cracks" in compliance with the directions of the Hon'ble National Green Tribunal in the matter.**

A meeting of the Joint Committee in the matter of OA No.93/2023 In re: News item published in Newspaper 'The Hindu' dated 04.02.2023 titled "19 families shifted after houses in J&K village develop cracks" in compliance with the directions of the Hon'ble National Green Tribunal was held under the Chairmanship of Chief Secretary, J&K on 08.02.2024 at 09.30 AM in the Meeting Hall, 2nd Floor, Civil Secretariat, Jammu.

2. The meeting was attended by the following Members of the Committee:-

1. Financial Commissioner (Additional Chief Secretary), Forest, Ecology & Environment Department.
2. Prof. J.S. Rawat, Kumaon University, Almora.
3. Dr. Khayingshing Luirei, Wadia Institute of Himalayan Geology, Dehradun.
4. Dr. Sandipan Mukherjee, G.B Pant National Institute of Himalayan Environment.
5. Dr. PG Jose, National Institute of Hydrology, Roorkee.
6. Dr. Ritesh Agarwal, Space Applications Centre, Ahmedabad.
7. Dr. Devendra Singh Rawat, National Institute of Rock Mechanics, Bangalore.
8. Dr. Narendra Sharma, CPCB, RO Chandigarh.

Further, the following officers also attended the meeting:-

1. Administrative Secretary, Public Works (R&B) Department.
2. Divisional Commissioner, Jammu.

3. Secretary to Government, Deptt of Law, Justice and Parliamentary Affairs.
4. Deputy Commissioner, Doda.
5. Administrative Secretary, DMRR & Reconstruction Department.
6. Special Secretary to the Government, Housing & Urban Dev. Department.
7. Chief Engineer, R&B, Jammu.

3. The meeting commenced with Financial Commissioner (ACS), Forest, Ecology & Environment Department welcoming the Chief Secretary, J&K and the Expert Members of the Joint Committee constituted in the matter on the directions of the Hon'ble National Green Tribunal vide Government order No.387-JK(GAD) of 2023 dated 24.03.2023, and other participants.

4. The FC (ACS), Forest, Ecology & Environment Department gave a overview of the case and the actions taken in the matter in compliance with the directions of Hon'ble Tribunal from time to time. Deputy Commissioner Doda informed the meeting about the relief and rehabilitation measures undertaken by the District Administration.

5. The meeting was informed that in its order dated 11.12.2023, the Hon'ble Tribunal has observed:

*“9. .... We find that occupation of the land in question and raising of construction by the affected persons, has been allowed due to inaction, inefficiency or lack of monitoring or supervision on the part of UT and its authorities and stakes have been allowed to be created on the land in question for the reasons attributable to State's inaction. Hence, UT cannot absolve of its responsibility of compensating the people who have suffered loss or damages at the land in question for the reasons, not attributable to these persons, but man-made situations which also have arisen due to inaction on the part of UT and its authorities.*

*10. In such cases, prima-facie, we are of the view that UT is liable to pay compensation, to the extent, the damage has suffered by the people who have raised their structures on the land in dispute....”.*

6. It was informed that a meeting was subsequently held on 08.01.2024 under the Chairmanship of Chief Secretary, J&K, wherein various issues connected with rehabilitation and compensation were again deliberated and it

was decided that a meeting of the Joint Committee constituted by the Hon'ble National Green Tribunal in the matter will be convened, as directed, to discuss the way forward in compliance with the directions of Hon'ble National Green Tribunal dated 02.11.2023 and 11.12.2023.

7. It was informed that the meeting was being convened to discuss the matter of rehabilitation/compensation of the affected persons in compliance of the directions passed by Hon'ble NGT in the orders mentioned above; to deliberate upon the measures already taken for providing relief to the affected persons, and additional measures, that are required to be taken in light of the directions of the Hon'ble Tribunal.

8. The Chief Secretary, J&K requested the Expert Members of the Joint Committee to favour the participants with their views regarding the above issues and suggest the way forward in compliance with the directions of the Hon'ble National Green Tribunal.

9. The members of the Committee were of the view that the spirit of the orders of the Hon'ble Tribunal should be respected. The Members felt that the matter was of a nature where it should be handled with sensitivity as well as with accountability. The members discussed various connected issues like:

- The title of the land over which these structures were constructed, and norms municipal compliances/ followed in their construction.
- Whether mishap could be said to be totally a manmade disaster.
- Whether the damages could be said to be not at all attributable to the actions of the owners?
- Compensation payable in similar cases, for compulsory acquisition, under the provisions of Land Acquisition Act;
- Is there any provision for compensating such cases in J&K/ Govt. of India/ other states and UTs.
- If compensation/relief is required to be paid, what should be the scale/norms?
- Can encroachments/ illegal occupation be liable for compensation, if affected by disaster.
- Can funds from the public exchequer be utilized for compensating such damage or should the officers/officials who have let the situation arise be made liable.

- Doesn't this become a precedent in all such cases of illegal encroachments, across the UT and the country?

10. The above issues were deliberated in detail and following facts were noted/observations made:

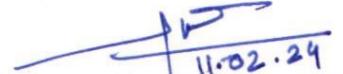
- a) The structures have been made on Kahcharai/State land and in violation of municipal norms. The structures are *per se* illegal.
- b) These have been done with full knowledge and connivance of the private owners and public servants, mandated with the responsibility of ensuring rule of law. Therefore, neither the private owners nor the concerned public servants, absolve themselves of the responsibility; Therefore, it perhaps cannot be said that the damages are not at all attributable to the actions of the owners.
- c) The damages were a result of the landslide/soil slippage. This was because of the poor land stability and lack of proper drainage. Therefore, the mishap was a result of combination of both – manmade as well as natural factors.
- d) No compensation is payable even in cases where such illegal structure are compulsorily acquired under the Land Acquisition Act.
- e) The meeting was informed that relief as per the SDRF norms has been provided. Land under PMAY(G) norms has also been provided to the landless, as per norms. The meeting was informed that there is no policy/norm under which the damages to illegal structures could be compensated. The members were not aware if any such provision existed in any other State or UT. The possibility appeared remote because even the norms of Land Acquisition Act do not provide such compensation.
- f) The members were also of the view that there are a number of such vulnerable areas of state land which have been encroached over the past years and constructions raised illegally by occupants not only in this affected area but also throughout the UT of J&K and even other Himalayan States. The other Expert Members were also of the view that proper arrangements are required to be made to deal with the issue of illegal occupation and due consideration should be given to the fact that actions taken in the current case may lead to a situation where a precedence is set for future incidents. Dr. Jose also pointed out that illegal occupation are an issue in the flood plains of major rivers also. The Expert Members also

noted that the manner in which such cases are dealt with by other Himalayan States like Uttarakhand and Himachal Pradesh may also be studied as those States are also prone to such incidents.

- g) The Chief Secretary, J&K observed that the damage occurring at such a site is to be compensated then the manner in which the damage is assessed must be established for all cases uniformly. The scale and norms for the compensation would need to be defined.
- h) The participating officers as well as the Expert Members felt that if payment of compensation is considered in this case, then there is a possibility that it may become a precedent which may lead to escalation of further encroachments and illegal occupations. Hence, there is a need for the UT Government to be circumspect in this matter in order to avoid opening a pandoras box. Prof. J.S Rawat, Dr. Ritesh Agarwal, Dr. D.S Rawat and Dr. PG Jose also agreed and felt that this should be dealt with as a policy matter and necessary guidelines should be framed before proceeding further.
- i) The Law Secretary was of the opinion that since there are no rules/guidelines at present which could be followed by the UT Government, proceeding to pay compensation will be setting a new precedence in the UT. Therefore, if the Committee agrees, the Hon'ble Tribunal may be approached for guidance on the manner in which to proceed further.

11. It was agreed that the spirit of the approach of the Hon'ble Tribunal is respected and the UT Government has made efforts to proceed according to the same spirit. However, in absence of rules/guidelines it was felt that the issue of whether any structure raised illegally on state land should be compensated if damaged at the cost of the public exchequer. Moreover, what principle should be used for assessment of the assets, whether construction, agriculture, horticulture or other assets that may get damaged on state land occupied illegally by encroachers. Further, the guidelines on the procedure of assessment and quantum of assessed amount to be paid may also required to be framed.

12. It was decided that the above considerations may be placed before the Hon'ble Tribunal for providing guidance on the manner in which the UT would be required to proceed further.

  
11.02.24

(Vivek Modi)

Special Secretary (Technical)

No.FST/Lit/33/2023(7142037)

Dated.11-02-2024

Copy to the members of the Joint Committee: -

1. Prof. J.S. Rawat, Kumaon University, Almora.
2. Dr. Khayingshing Luirei, Wadia Institute of Himalayan Geology, Dehradun.
3. Dr. Sandipan Mukherjee, G.B Pant National Institute of Himalayan Environment.
4. Dr. PG Jose, National Institute of Hydrology, Roorkee.
5. Dr. Ritesh Agarwal, Space Applications Centre, Ahmedabad.
6. Dr. Devendra Singh Rawat, National Institute of Rock Mechanics, Bangalore.
7. Dr. Narendra Sharma, CPCB, RO Chandigarh.

Copy also to the:-

1. Commissioner/Secretary to the Government, Housing & Urban Dev. Deptt.
2. Administrative Secretary, Public Works (R&B) Department.
3. Divisional Commissioner, Jammu.
4. Secretary to Government, Deptt of Law, Justice and Parliamentary Affairs.
5. Deputy Commissioner, Doda.
6. Administrative Secretary, DMRR & Reconstruction Department.
7. Private Secretary to Chief Secretary, J&K.
8. Private Secretary to FC(ACS), Forest, Ecology and Environment Department.
9. PS to Special Secretary (Tech.), Forest, Ecology & Environment Department.