

Government of Jammu and Kashmir deptt of RD&P
OFFICE OF THE BLOCK DEVELOPMENT OFFICER LALPORA
 Email Id: bdolalpora16@gmail.com

BEFORE THE NATIONAL GREEN TRIBUNAL PRINCIPAL BENCH NEW DELHI

Subject:- Response/Reply to the allegations levelled against Respondent NO: 6 Block Development Officer Lalpora Kunzar Baramulla Jammu and Kashmir-193402 in the Original Application No. 1344/2024 & Case.

Raja Muzaffar Bhat (Applicant)

Versus

Union Territory of Jammu and Kashmir & others (Respondents)



The reply is submitted by **Block Development Officer Lalpora, Tangmarg Respondent no:-6** herein the head of Block Lalpora and as such I am well acquainted with the facts of the case pertaining to the **Construction of Playfield at village/Panchayat Sonium**, being the government work every aspect of the process is well documented and I will be Annexing every document in reply to the allegations levelled against me that will surely counter the malafide and motivated intentions of the applicant. Before submitting the para-wise reply to the allegations levelled against me, I will simply highlight the role of Block Development Officer in the execution of Developmental works in the Union Territory of Jammu and Kashmir and that has very much relevance to this case.

ROLE OF BLOCK DEVELOPMENT OFFICER vs TEHSILDAR

The Block Development Officer is the head of all Panchayat Halqas of the block, and a Panchayat Halqa is headed by the **Sarpanch**. For the Development of a village/Panchayat like construction of School, ICDS Centre, Health Centre, Library, Drain, Playfield, Culvert etc an annual action plan is prepared in the **Gram Sabha** (voters of the Panchayat) meeting headed by the Sarpanch of the village and **representatives of all the Departments**. Once the plan is prepared and approved by the Voters, Ward members and Sarpanch of the Panchayat, it is considered that the plan is approved by the **Gram Sabha**. After approval from **Gram Sabha**, it is submitted to Block Development Office for compilation and the Block development Officer cannot make any change to the plan but submits after compilation of all Panchayats/Villages to **District Development Council** after passed by **DDC Council**, it is finally Approved by **District Programme Coordinator MGNREGA** (Deputy commissioner Baramulla). As envisaged in **MGNREGA ACT 2005, Panchayat Raj Act 1989 (chapter iii section 12)**. Once the plan is approved by **DDC Council** and **District Programme Coordinator MGNREGA** the plan is considered to be approved by all the Departments of the District, after approval, estimation of the works in the plan starts followed by **Administrative Approval and Technical Sanction and finally authorization and execution**. At the time of execution of work on the state land which is encroached by the land grabbers/encroachers the role of concerned **Tehsildar** comes into play because the Revenue Department deals with the land records and are holding **Magisterial powers** to deal with the **miscreants/landgrabbers/land encroachers** to evict the grabbed land and bring it to the lawful position. So whenever comes the issue of a type/kind/measurement/demarcation of state land to be developed into a playfield or anything else a proper communication is made by the **Block Development Officer** to the concerned **Tehsildar** for demarcation of the said land and bringing it to its lawful position. Same principle has been adopted in this very case.

Para-wise Reply to the allegations levelled.

1; - In Reply to the Diversion of natural stream commonly known as "Badyari Nallah" and felling of 1000 trees; -

In the outset this allegation levelled against me is frivolous & false, I urge the Hon'ble tribunal to please go through the **MGNREGA site <https://nrega.nic.in>** and check whether any work namely "Diversion Of Badyari Nallah" or "Construction of Playfield at Sonium" has been executed or not, simply click **MGNREGA site <https://nrega.nic.in>**, go to reports, enter captcha, select state, then go to R6 module and then click on serial no 12 (Dynamic report for Monitoring and detail of works), enter the details like

16/25/2024
 10/04/25

LD.R.C.
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Block Development Officer Lalpora

District Baramulla, Block Lalpora, Panchayat Sonium, financial Year 2023-24, by entering such details the list of all works executed year wise will get displayed, If this work does not exist on the portal, means this work has not been executed, if the work is not executed then how come the stream has been diverted. Also, offline list of works executed in Sonium for the year 2024 is annexed herewith in ANNEXURE-A to support the statement. Regarding the felling of 1000 trees, is also a silly and fictitious allegations levelled against me. The domain of felling of trees and making the state land free from every obstruction belongs to Department of Revenue headed by Tehsildar as per J&K Land Revenue ACT 1956 in compliance to the directions of Hon'ble supreme court of India in civil appeal no 1132/2011 titled Jagpal Singh vs state of Punjab and others and the powers conferred by J&K Land Revenue act Svt 1996 and J&K Common lands regulation act 1956 and J&K cabinet decision no 188/23/2011 dated 19/10/2011. And in consonance to these acts the occupants of the state have to remove the encroachment by their own and in case of removal by the revenue authorities, the expenditure incurred upon removing such encroachment is born upon the encroachers, therefore the applicants have not presented any such notice of Tehsildar before the Hon'ble Tribunal which could reveal that the land was occupied by huge no of trees, in spite of the applicants have made this motivated application to defend the encroacher's who have grabbed the state land, otherwise there were no such number of trees. So, the allegation of cutting down of 1000 trees is very frivolous, had been such number of trees felled down the applicant would have presented the photo before the Hon'ble Tribunal which could have depicted the stems of felled trees. Therefore, the applicants have clear malafide intentions in making this allegation even the applicant is in Hand & glove with land encroachers and wants the administration to step back in the anti-encroachment Drive. This argument is supported by the Notices issued to the state land encroachers by concerned Tehsildar annexed as ANNEXURE B and letter of Tehsildar to SHO Pattan for arrangement of police personals at the time of anti-encroachment drive the letter is annexed ANNEXURE-C. The Notices clearly depicts that there were no such trees.

2: - In Reply to point 4 that in Feb 2024 the Block Development Office Block Lalpora with permission of Sarpanch has started the diversion of the stream for setting up of playground: -

it is prayed before your Hon'ble tribunal, that during the eviction of state, the Land grabbers/encroachers has filed the petition before the Hon'ble Court Pattan, Baramulla on 15/02/2024 CNR No KJBA12.... 2024 in which the court directed the Revenue Department to maintain status quo, however allowed the respondents to submit the objections and after filing of objections by Concerned Tehsildar annexed as ANNEXURE-D with material evidences the Court of Sub-judge Pattan Baramulla announced the judgement on 09/03/2024 in favour of Revenue Department with the order to continue the anti-encroachment drive. After losing the case on merits in the Court of Sub-judge Pattan Baramulla the land grabbers/ encroachers appealed before Court of 1st Additional District Judge Baramulla on 09/03/2024 (same day when judgement was announced by Sub-judge Pattan) and the court of 1st Additional District Judge Baramulla again directed the Revenue Authorities to maintain status quo and allowed the Respondents to file the objections and till the next hearing, till date the case is pending before the Court of 1st Additional Judge Baramulla So how come the Govt work is executed when the issue is sub-judice in the court of additional judge Baramulla, henceforth the allegation levelled regarding diversion is totally frivolous and baseless. The photographs presented by the applicant showing excavation of earth actually shows the retr eval of state land by the revenue authorities not the diversion of stream. The copies of court orders are Annexed herewith as ANNEXURE-E.

3: - in reply to allegation 5 that 1000 tress such as 600 willow trees, 300 popular trees and 100 Acacia and Rubina and 10 walnut trees.

This allegation is frivolous and false, as per the online reports available on <https://nrega.nic.in> no Govt work has been executed at the site then how come the 1000 trees have been cut down, The allegation falsifies also from this argument that felling down of 1000 trees may cost about at least one to two lac rupees which the Block Development officer could not arrange without executing the govt work. Also, in reference to the J&K land Revenue ACT 1996 and J&K Common lands regulation act 1956 and J&K cabinet decision no 188/23/2011 dated 19/10/2011, the domain of cutting down of trees pertains to Revenue Authorities headed by Tehsildar and the concerned Tehsildar kunzer in its notices as annexed as ANNEXURE-D has not mentioned that the land was occupied by trees, also, the expenditure incurred in removing encroachment in the form of


Block Development Officer
Lalpora

trees is born upon the land encroacher's, which the applicant has not mentioned, had the cutting of trees been true there shall have been a notice to the tree owners to pay the cost of cutting down of trees. So, the allegation levelled is absolute wrong, and false evidences in the shape of wrong photos have been presented before the Hon'ble tribunal by the applicant.

4: - in reply to No Objection Certificate of irrigation and flood Control Department:-

It is prayed before the Hon'ble tribunal that in the execution of any work to any irrigation stream comes under the category of **Convergence**, means the Department of Rural Development headed by Block Development Officer and Department of Irrigation and flood control headed by Assistant Executive Engineer execute the work in collaboration and in such works no NOC is required from the Department. Also, when the work to be executed is already approved by Gram Sabha wherein the senior official of the irrigation and flood Control Department participates and approves lead by the approval from District Planning Committee then there never comes the question of NOC. However, the Sub-Divisional Magistrate Gulmarg has constituted a committee headed by Tehsildar Kunzer, vide his no SDM/G/2024/2246-50 DATED 11/3/2024 Order annexed as ANNEXURE-F and in the report the Tehsildar Kunzer vide his letter no TK/OQ/2023-24/700-05 Dated 14/03/2024 annexed as ANNEXURE-G clearly communicates to the **Sub-Divisional Magistrate Gulmarg** that no such Diversion of the stream has been taken up. *Upon the report of Tehsildar Kunzer the Sub-Divisional Magistrate Gulmarg forwarded official communication to Block Development Office Lalpora vide his letter No;-SDM/G/2024/346 annexed as ANNEXURE-H the letter envisages that the Sub-Divisional Office has received communication from Executive Engineer FBI Tangmarg and Communication from Office of Tehsildar Tanmarg/Kunzer wherein it has been communicated that original course of Nallahic/Khul has not been changed. Henceforth you are directed to proceed ahead without further delay in executing the work.* After getting the letter from SDM Gulmarg the work could not be executed due to court order, and because of Court Order no **Allotment or Authorization order** was made to the work for its execution, it is pertinent to mention here that no work is executed until the authorization is issued by the Block Development Officer. So the Allegation of executing work without NOC from I&FC also falsifies from the orders issued by SDM Gulmarg annexed as ANNEXURE- G &H, Henceforth the applicant has clear malafide intentions in such a case and is in hand and glove with the land grabbers to divert the attention of administration and lead the land grabbers to continue the grabbing state land.

Therefore, most respectfully, it is prayed before the Hon'ble tribunal to dismiss the present application for the reasons and facts stated above and thus render justice.

NO; - 2224
Dated; - 14-03-2025

Yours faithfully,

Block Development Officer Lalpora.
Block Development Officer
Lalpora

Panchayat Name	Work Start Fin	Work Status	Work Code	Work Name	Sanction Amount Wages	Sanction Amount Material	Sanction	Amount paid in Wages	Amount paid in Material	Amount paid Wages	Amount paid Materi	Total Mandays	
	4	5	6	7	8	14	15	16	17	18	21	22	23
Soniurn	2023-2024	Ongoing	1402011023/I C/8808579811	I/o paristan khul with R-wall at diff. spots at soniurn.3	128399.21	76469.03	204868	0	0	121268	0	497	
Soniurn	2023-2024	Completed	1402011023/I C/8808575546	I/o kachin khul with drain at diff. spots 5	126166.41	89269.03	215435	0	37467	105652	37467	433	
Soniurn	2023-2024	Ongoing	1402011023/R C/8808647564	I/o road from L/o mohd Asadullah to mohd maqbool with R-wall at hyen.1	81442.3	52317.49	133803	28490	0	35078	0	137	
Soniurn	2023-2024	Completed	1402011023/I C/8808564909	Imp of Tangkhah khul at Soniurn with P wall	81784.59	55388.6	137214	0	0	50096	34942	212	
Soniurn	2023-2024	Ongoing	1402011023/I C/880855293	I/o Hayun khul from I/o Ali Mohd to WatalPath with Rwall at different spots	106815.24	71971.29	178840	0	61478	106387	61478	445	
Soniurn	2023-2024	Ongoing	1402011023/R C/8808651566	I/o of Ganhun road with filling and R-wall 5	120750.03	79196.55	199947	5368	0	83692	0	343	
Soniurn	2023-2024	Completed	1402011023/ AV/88085181	Construction of 1 No. of Pedestal at Panchayat Halqa Soniurn	2345.6	31951.96	34298	0	18487	732	18487	3	
Soniurn	2023-2024	Ongoing	1402011023/I C/8808575547	I/o of Gurrit khul with drain at soniurn1	68047.73	58627.2	126694	24346	0	59482	0	238	
Soniurn	2023-2024	Approved	D/880859227	filling of sunni makbarah at soniurn.2	156292.29	143589.5	299882	0	0	9760	0	40	
Soniurn	2023-2024	Completed	1402011023/I C/8808585588	I/o lakut ara with filling n/L/o Rakesh kumar 1	136526.16	63435.88	199962	4880	0	64416	0	264	
Soniurn	2023-2024	Ongoing	1402011023/I C/8808555415	I/o Changlar khul with R-wall at different spots.	68326.34	42579.97	110934	1464	0	52406	0	223	
Soniurn	2023-2024	Completed	1402011023/L D/880857802	filling of shia mazar at soniurn.5	165982.85	33752.91	199736	0	0	116144	0	476	
Soniurn	2023-2024	Completed	1402011023/I C/8808564908	Imp of Ardhama khul with syphon at Soniurn	112156.05	65697.25	177910	0	63987	108515	63987	454	
Soniurn	2023-2024	Ongoing	1402011023/R C/8808651565	C/o road from satwuth to anwan n/L/o all mohd chopan and others.1	266042.15	188170.2	454356	229474	0	247042	0	958	
Soniurn	2023-2024	Ongoing	1402011023/L D/880859262	Earthfilling Makboozah Ahi Islam	277080.54	5767.25	282848	0	0	5856	0	24	
Soniurn	2023-2024	Ongoing	D/880859415	Development of Playfield Kanloo side	408361.59	47459	455821	7320	0	7320	0	30	
Soniurn	2023-2024	Ongoing	1402011023/L D/880859387	Development of Park near Astan Shereef bunyaal at soniurn	352042.15	133786	486001	208754	0	263654	0	1031	
Soniurn	2023-2024	Ongoing	1402011023/L D/880858696	devel. of jinazgah at lakut masjid soniurn5	69270.51	45098.99	114376	6734	0	64318	0	262	
Soniurn	2023-2024	Completed	1402011023/I F/AY/291383	Construction of PMAY-G House for Individuals -PMAY-G REG. NO. JK140588879	23180	0	23180	0	0	23180	0	95	

از عدالت ایگزیکٹو ٹریبونل درج ذیل تگھلہ کے لئے

عنوان : خلاف ورزی نسبتاً ناقصہ قبضہ / نسبت پر غلبہ سرکار
محفوظ کابجیٹری واٹھ در دستہ لومخ

نورتن سنگھ 1۔ غلام مصطفیٰ مٹہ 2۔ فتح رحیم مٹہ

3۔ محمد الہ مٹہ 4۔ محمد وارہ علی مٹہ

5۔ محمد جماع مٹہ 6۔ علی محمد مٹہ

7۔ محمد مقبول مٹہ 8۔ علی مٹہ

9۔ امتیاز حسین مٹہ 10۔ علی حسین مٹہ

محاملہ مذکورہ عنوان کے تحت آئیڈو نڈر لڈڈ ڈسٹریٹ اٹھ

دعا جائے۔ کہ آپ مورخہ پندرہ جنوری 2024ء | 2024 | 15 | ایڈس 11 سے

حاضر رہے۔ غیر جانبدار صورت میں آئیڈو عدالت جانوں کاروان کھل

سیا رائے جاری کریں۔ تمہارا لہر



7K/08/2023/633

14/02/2024

سجرا

تاریخ

ایگزیکٹو ٹریبونل کے لئے درخواست کی ہے کہ عدالت کے فیصلے کو عملی جامہ پہنائے جائے۔
فوری طور پر فیصلہ فرمائیں۔

انتخاب شماره کردوری بایست موضع سونم تحصیل: بلوچ ضلع باره بر

۶	۵	۳		۲	نام مالک مع احوال
		تعداد	۴		
قسم زمین	مرله	کنال	نام مالک مع احوال	شماره اراضی درم	
۱	۱۸	۱۵	۱۸	مفتوحه راجگان	/
۱	۱۸	۱۸	۱۸	مفتوحه راجگان	
۱	۱۸	۱	۱	مفتوحه راجگان	

۱۹ عرض مع در غیر زمین مال خود در شماره ۱۴۳ مس مسج
 ال سال قبل از زمین - ۳۰
 در سال ۱۴۳۵ مس مسج
 در سال قبل مس مسج
 در سال قبل مس مسج
 در سال قبل مس مسج
 در سال قبل مس مسج

از عدالت ایگزیکٹو ججسٹریٹ درجہ اول اسٹینڈنگ قلمی درجہ اول تحصیلدار کنڑ
مضمون :- درخواست بھاریک باسٹرنگان سونم جی کو بی

مخلاف

① غلام مصطفیٰ ولد غلام احمد ولد
② محمد اسد رتھو ولد غلام احمد ولد
③ محمد قاسم ولد ولد علی ولد

حکم بنام :- ایس۔ ایچ۔ او۔ کنڑ / پٹن

محاملہ معززہ عنوان الصد کے نسبت آپکو حکم دیا جاتا ہے کہ آپ ملزم
ملزماں کو حراست میں لے کر پٹن 24-2-15 صبح گیارہ بجے عدالت ہذا
میں بخضر ضروری کاروائی پیش کریں۔ نیز اگر ملزم / ملزماں
ضمانت و چیک ذاتی فی کس بقدر مبلغ 25000/- روپیہ پیش کریں تو
ملزماں حراست سے باز رکھیں و عمر الصد۔

ایگزیکٹو ججسٹریٹ درجہ اول اسٹینڈنگ قلمی درجہ اول
مختیار کنڑ

نمبر نمبر 63/2023/TKOB

موضوع =

14/2/2024

کاپی ہذا :-

ایس۔ ٹی۔ ایم صاحب ملک بابت اطلاع دہی

**EXECUTIVE MAGISTRATE 1ST CLASS
NAIB- TEHSILDAR CHUKAR-KUNZER
SUPURDNAMA**

Today on 11-04-23 undersigned along with Patwan halqa Yali & PH Waroo conducted demarcation as directed by worthy S.D.M Gulmarg. Also members of panchayat halqa sonim & Lamberdar concerned were present on spot. The land patch evicted on spot has been handed over to panchayat body sonim for development of play field/ playground. Also notices were issued to encroachers to remove further encroachments on their own failing with action under law will be taken against them.

[Handwritten Signature]

NAIB-TEHSILDAR CHUKAR-KUNZER

p. Waroo
**PANCH
Nazi Sonim
Halqa PH-08, Sonim
Block Lalpora Ward No-05**

*PANCH
Kandhmal, Waroo
Ward No-02*

*Sonim
PH-08, Sonim
Block Lalpora*

*PH-08, Sonim
Lalpora Ward No 01*

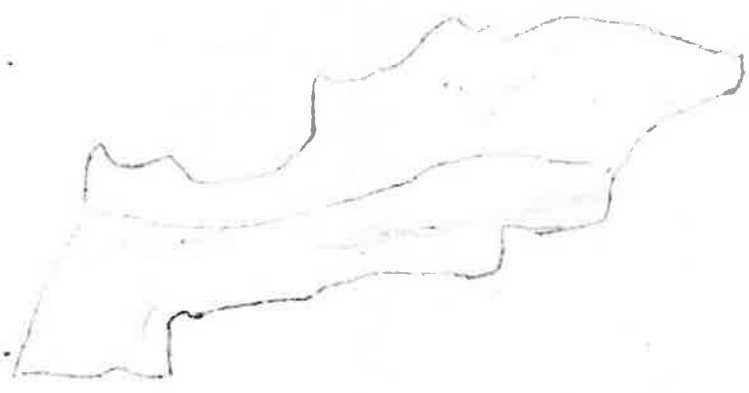
**PANCH
Kandhmal, Waroo
Ward No-2
Halqa Sonim-042**

1512

و این خردگوار ما در این سوختن و اینجاست

مکانها را بنویسید

سما



کوه

سور

سور. این خردگوار است / 17 17 17

1512

1750

Z. ...
...
...

Office of the Tehsildar Kunzer

Asst. Collector 1st Class / Executive Magistrate Class Ist.
(Email: tehsilofficekunzer@gmail.com; 01954-255110).

The Station House Officer,
Kunzer/Patan

Subject: Providing of Police Assistance for anti encroachment drive at Village Sonium for development of Playfield.

Sir,

Regarding the subject cited above, in this connection you are hereby directed to provide sufficient police assistance both men and women contingent on 15/02/2024 at 11am in order to maintain Law and Order problem.

NO: TK/OQ/2023 / 632
Dated: - 14 /02/2024

Yours faithfully,



Copy to:

1. The Worthy Deputy Commissioner Baramulla for favour of information
2. Sub Divisional Magistrate Gulmarg for information.
3. SDPO Patan for information.

OFFICE OF THE TEHSILDAR KUNZER

EXECUTIVE MAGISTRATE 1ST CLASS / ASSISTANT COLLECTOR 1ST CLASS.

BEFORE THE HON'BLE 1st ADDITIONAL DISTRICT JUDGE, BARAMULLA

In the case of:

1. Gh. Mustafa Malla S/O Gh. Rasool Malla
 2. Mohamad Assadullah Malla S/o Lt Gh Ahmad Malla
- Both Residents of sonium tehsil Kunzer District Baramulla

.....**Appellants**

VERSUS

1. Union Territory of Jammu & Kashmir through Commissioner Secretary to the Rural Development department at Civil Secretariat Srinagar/Jammu.
2. Assistant Commissioner Development Barramulla.
3. Block Development officer Lalpora Tangmarg.
4. Tehsildar Kunzer.
5. Ghulam Mohammad Malla S/o Ali Mohammad Malla.
6. Iqbal Hussain Malla S/o Ghulam Hussain Malla, both residents of Village Sonium Tehsil Kunzer & District Barramulla.
7. Shabir Ahmad Sofi S/o Ghulam Rasool Sofi R/o Kanloo Tehsil Pattan & District Baramulla.

....**Contested Respondents**

8. Mohammad Qasim Malla S/o Ali Mohammad Malla
 9. Gh. Hussain Malla S/o Lt. Gh Rasool Malla
 10. Gh. Ahmad Malla S/o Ali Mohammad Malla
- All residents of village Sonium Tehsil Kunzer Dist. Bla

...**Proforma Respondents.**

In the matter of:- Appeal against order dated 09.03.2024 passed by learned Sub-judge/civil Judge Sr.Division Pattan in the application made by respondent No.03 for clarification

May it please your honour that:

The statement of facts/ compliance report is submitted as under:

01. That this office received a complaint/representation from inhabitants of village Sonium through Sarpanch along with senior citizens of the said village who complained that some of the persons have illegally encroached the Kahcharie Land.
02. That the village inhabitants also claimed that some illegal encroachers particularly petitioners have encroached Shamilat deh Sec 4 land.

TEHSILDAR KUNZER 4

03. That the representation was forwarded to Naib Tehsildar Chukar for verification and report.
04. That Naib Tehsildar Chukar verified the matter and it was found that the petitioners namely Ghulam Mustafa Malla S/o Gh Rasool Malla, Mohd Assadullah Malla S/o Gh Ahmad Malla, and Mohd Qasim Malla S/o Ali Mohd Malla, Ghulam Hussain Malla S/o Late Ghulam Rasool Malla and Ghulam Ahmad Malla S/o Ali Mohammad Malla have encroached the Shamilat deh Sec 4 / Kahcharie land at village Sonium falling under survey No.s 160,162,163, 403.
05. That the notice under the provisions of Land Revenue Act 1996 was served/issued to aforementioned petitioners (illegal encroachers) by the undersigned and they were directed to evict the land within 04 days.
06. That the illegal encroachers didn't obey the directions of this office and continuously made hurdles and intentionally tried to grab the Shamilat Sec 4 / Kahcharie land of village Sonium and this office didn't allow them to do so, and accordingly an anti-encroachment drive was carried out as per provisions of law.

No.TK/OQ/2023-24/810
Dated:-28/03/2024

Tehsildar Kunzer
Assistant Collector 1st Class

28/3/2024
TEHSILDAR KUNZAR

COURT OF SUB JUDGE PATTAN

Case File No. 41/misc.	Date of Institution 23.02.2024	Date of Order 09.03.2024
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In the Case of:-

1. Ghulam Mustafa Malla
Son of Ghulam Rasool Malla
2. Mohammad Assadullah Malla
3. Ali Mohammad Malla
Both sons of late Ghulam Ahmad Malla
4. Mohammad Qasim Malla
Son of Ali Mohammad Malla
5. Ghulam Hussain Malla
Son of late Ghulam Rasool Malla
6. Ghulam Ahmad Malla
Son of Ali Mohammad Malla
All Residents of village Sonim, Tehsil Kunzer
District Baramulla
Plaintiffs/ Non-Applicants along with their
Counsel Adv Javed Ahmad Parray present.

Versus

1. Union Territory of Jammu & Kashmir through
Commissioner Secretary to the Rural Development
Department at Civil Secretariat Srinagar/ Jammu
2. Assistant Commissioner Development Baramulla
3. Block Development Officer Lalpora Tangmarg
4. Tehsildar Kunzer
5. Ghulam Mohammad Malla
Son of Ali Mohammad Malla
6. Iqbal Hussain Malla
Son of Ghulam Hussain Malla
Both Residents of village Sonim Tehsil Kunzer District
Baramulla
7. Shabir Ahmad Sofi
Son of Ghulam Rasool Sofi
R/O, Kanloo Tehsil Pattan, District Baramulla

Defendant No.3/ Applicant herein along with his Counsel Advocate Fouseef Gani and Adv Muneer Ahmad
Dar present.

In the matter of: - Application on behalf of defendant no.3/ applicant herein seeking
clarification as to whether any order has been passed by this court
against the applicant herein which debars the defendant no

Ghulam Musta Malla & Ors., V/S. U.T of J&K& Ors.
Case File No41/misc

03/applicant to proceed as per the provisions of law with respect to the land bearing Survey No. 162 and 163 in the above captioned suit.

CORAM: - Altaf Hussain Khan

U.I.D No. JK00187

ORDER

1. Instant application seeking clarification as to whether any order has been passed by this court against the defendant No.3/ applicant herein which debars him to proceed as per the provisions of law with respect to the land bearing survey no. 162 and 163 in the above captioned suit has been submitted by the ld. Counsel for the defendant No.3/ applicant herein on the ground that this court has been pleased to pass an interim order on 16-02-2024 by virtue which the defendants no 05 to 07 have been directed to maintain status quo with respect to the suit property till next date of hearing. Land measuring 18 Kanals and 25 Marlas falling under Survey No 162 situated at Sonim Tehsil Kunzer is SHAMILAT DEH Ghair Mumkin Nala

and the land measuring about 18 Kanals and 18 Marlas falling under Survey No 163 situated at Sonim Tehsil Kunzer is SHAMILAT DEH Mahfuz Khacharaic same is evidenced by the copy of Intikhabi Girdawari on record plaintiffs/non-applicants herein have made encroachments upon the water stream/nallah and upon the kahcharai land bearing survey no's aforesaid by planting various kinds of trees in order to grab the said landed property and to squeeze the said water stream/nallah. Revenue field agencies have also submitted report to the defendant no. 04 (Tehsildar Kunzer) regarding the said encroachments made by the plaintiffs/ Non-applicants upon the land and water stream aforesaid. Upon receipt of the report from the field agencies Tehsildar Kunzer has issued notices to the plaintiffs / non-applicants for removal of encroachments made by them upon the said

nallah/water stream and the Kahcharaie land but the plaintiffs / non- applicants have failed to remove the same as a result a drive is being conducted by the Ld Tehsildar Kunzer for removal of encroachment in terms of provisions of JK Land Revenue Act so as to retrieve the water stream/nalla and the said kahcharai land in question to its original position. The defendant no 03/applicant herein for utilization of allotted funds for cleaning and clearing the already squeezed nallah and restore the same to its original position has undertaken certain works upon which the funds can be utilized and maximum possible benefits are obtained from the said works which shall cater the needs of the large population of the locality. Due to clearance and cleaning of said nallah is not being merged with the road in fact the said activity is being carried out in order to cater the needs of maximum number of individuals.

agriculturalists by allowing free flow of water through the said nalla, but under the pretext of order dated 16-02-2024 passed by this Court the plaintiffs are misconstruing the said order and are not allowing the defendant no 03/applicant herein to proceed ahead in the matter as per the mandate of law. In case the funds allotted are not utilized at an earliest for allotted works same may lapse due to the closure of the ongoing financial year.

2. On the presentation of the application plaintiffs/ non-applicants were put to notice. In pursuance to service supra Advocate Javeed Ahmad Parray has caused appearance on behalf of the plaintiffs/ non-applicants, submitted objections to the application.

3. In the objections filed it is submitted that the application filed is misconceived both on the facts as well as on law. Same has been filed on false, frivolous

grounds. The defendant No. 03 / Applicant has not approached to this Hon'ble Court with clean hands. He has taken recourse to concoction with intent to mislead this Court. Prior to the filing of the application in hand seeking clarification the defendant No. 03 / applicant as well as the defendant No. 04 have filed their replies separately and in his reply the defendant No. 03 / applicant has averred that he has received the landed property for the construction of the playfield from the defendant no. 04 after its retrieval from the encroachers and all the Codal formalities including the technical Sanction and the administrative approval with respect to the work has been obtained and thereafter the work has been assigned to the mates, i.e., the defendants no 06 & 07. The nomenclature of the work as per the annual Action Plan 2023-24 clearly indicates that fallacies of the defendant no. 03 / applicant , as the

work in question has been sanctioned under MGNREGA under the name of "**Diversion of the Nallah near Playfield at Sonium**", while as the defendant no 03/applicant through the medium of the instant application has pretended to be acting for the desilting and dredging of the Nallah, without whispering a word about the assignment of the work to the defendants no 06 & 07 and without disclosing the actual nature of the work assigned to the defendants 06 & 07, thus given the reply filed by the applicant/defendant No. 03 his plea to carry out work pales into insignificance and in essence it is an attempt to negate the action of the Plaintiffs/non-applicants and renders their suit infractious. Construction/diversion in question is totally against the law and norms. Chief Engineer Irrigation and Flood control /Jal Shakti Department Srinagar vide his Order/Circular No. 13614-638 dated 29-03-2021

banned construction of Culverts, bridges and tractor crossings etc. over the water bodies, such as rivers, Nallahs, streams and canals. N.O.C's already granted without consent of the I & F.C department have been rescinded abinitio, further the power to grant N.O.C's has been conferred upon the designated authority, viz., the Superintending Engineer Hydraulic Circle Srinagar once the proposal is examined in detail. No such NOC has been obtained for diversion of Nallah in question by the defendant no 03/applicant from the concerned competent authority, same is evidenced from the communication addressed by the Assistant Executive Engineer Tail Sub-division Kunzer bearing No. TRK/1110-12 dated 23-02-2024, calling upon the defendant No. 03 / applicant herein to stop the illegal and unauthorized construction work of the playfield at Sonim. The defendants no 06 & 07 while attempting to

divert the Nallah employed the Five JCB's on spot in violation of MGNREGA Guidelines, besides the same being done without the NOC from the concerned supervising authority of the Nallah/Stream by establishing his own illegal hegemony and after giving a go-bye to the law and the rules, which calls for an enquiry through the Vigilance Organization of the UT of Jammu and Kashmir, with respect to which the answering non-applicants are contemplating to file an appropriate motion and the matter came to be argued. Heard learned counsels for both the sides.

4. Ld. Counsel for the defendant no.3/ applicant has argued that this court has passed order against the private defendants 5 to 7 in ex-parte in the application for interim relief whereby this court has directed the defendants nos.5 to 7 to maintain status quo on spot with respect to suit property. Ld. Counsel has argued

that in the garb of present order plaintiffs/ non-applicants are not permitting the official defendants to carry out the work on spot and to retrieve the Kahcharie/ state land on spot. Ld. Counsel has submitted that it is the plaintiffs/ non-applicants who have encroached upon the land recorded as Kahcharie or stream / Nallah. In the garb of the present order they are intending to grab the same again. Learned counsel has also submitted that land measuring 18 Kanals and 15 Marlas bearing Survey no. 162 is recorded as Gair Mumkin Nalla and land bearing survey no. 163 is recorded as Mehfooz Kahcharie as such is the prohibited Shamilaat land. This court has no jurisdiction to adjudicate upon the same. The ld. counsel has also argued that in case the official defendants are going to convert the land as Nalla/ stream it is the concerned authorities who are

empowered to remove the encroachment and to prevent its conversion. The ld. counsel has also argued that the plaintiffs/ non-applicants have no right over the suit land as such they cannot claim neither they have any right over the same. The Learned Counsel for the defendant no. 03/ applicant herein has also argued that the said work is being carried out under MGNREGA scheme formulated under GDPD programme, which is formalized and formulated at the grass-root level with the participation of all line departments which also includes the Department of Irrigation and Flood Control, whose one of the representatives/officials participated in the said meeting as such there is no requirement of obtaining any N.O.C from Irrigation and Flood Control department. Ld. Counsel has contended that they require the clarification to the extent that whether any order has passed by this court in the

application for interim relief bars the defendant no.3/
applicant herein to proceed ahead in the matter as per
the provisions of the law in respect of the land bearing
survey no. 162 and 163 as the same would clear the
confusion created in the garb of the status quo order
passed.

5. On the other hand ld. counsel for the plaintiffs/
non-applicants has argued that the defendant no.3 /
applicant herein seeks clarification to perpetuate the
wrong as they are going to convert the water stream into
playground that too without obtaining NO.C from
Executive Engineer irrigation and Flood control who is
competent authority under **Jammu & Kashmir Water
Resources (Regulation and Management) Act, 2010**
as conversion of the land recorded as a Nallah / stream
for any other purpose is not permitted unless N.O.C is
obtained by the concerned department from the

authorities empowered under **Jammu & Kashmir Water Resources (Regulation and Management) Act, 2010**. The defendant no.3/ applicant is having no authority to convert the land recorded as a Nalla/ stream for any other purpose other than purpose for which it is meant. Conversion of the water stream/ Nahalla will affect the irrigation source of the adjacent land holders and will thereby render its catchment area barren. Clarification cannot be sought for reviewing the order passed. The land recorded as Nalla/ water stream has been encroached upon by the defendants. The plaintiffs being the residents of the area want to protect the same and to prevent its conversion. The executive engineer has denied the N.O. C to the defendant no.3 and he has not challenged the same. The defendant no 03/ applicant now is bent upon to go ahead with his illegal activities and seeks clarification just to cover up

his wrong. As such clarification application submitted deserves to be dismissed. Executive Assistant Engineer Sub Division Kunzer has already issued a notice to the defendant no.3 / applicant calling upon to stop the illegal work of conversion on spot. Learned Counsel has relied upon;

1. Ram Chandra Singh, V/S Savitri Devi
and Ors. AIR 2004 S.C

2. Mukul Agarwal & Ors, V/S, State of
Uttar Pradesh & Anr. SCC Criminal Appeal
No. 249 of 2020 in support of his
arguments

6. Heard and considered the arguments. Perused the
plaint, application for interim relief, application seeking
clarification of the order passed in the application for
interim relief, objections to the application and other

material on record. I have also gone through the case law cited.

7. Plaintiffs / non-applicants herein have filed the suit captioned above on the plea they along with their respective co-sharers are the owners in possession of land bearing survey no. 165, 166 and 403 measuring 18 Kanals situated at Sonim. They have inherited the same from their ancestors. Land in question is being agricultural in nature and is source livelihood to them and their respective families. Rural Development department has through block office Lalpora has constructed the road through MGNREGA scheme using the river bed nallah material during the financial year 2022-23 adjacent to the landed properties of plaintiffs. Alongside the pathway a nallah/ water stream popularly known as Ara is passing through the land bearing Survey no's. 162, 163 and 403 which often remains at

the brim, particularly during the rainy season same acts as a drainage during flood and thereby safeguards the adjacent landed properties from being washed away. Nalla in question serves as a source of irrigation to the plaintiffs and other land as well. The defendants 2 and 3 on the behest of the private defendants are adamant to fill up the water stream/ nalla and change its course after merging the road with the same and to divert the same towards landed property of the plaintiffs/ non-applicants.

8. This court vide order dated 16.02.2024, has directed the defendants no 5 to 7 to maintain status quo on the spot with respect to the suit property subject to the objections from the other side. Order supra is still intact. The defendants have not submitted written statement or objections to the application for interim relief yet and instead of submitting written

statement/objections, defendant no.3 / applicant herein has filed application in seeking clarification to the extent whether the order passed by this court in the application for interim bars the defendant no.3/ applicant herein to proceed ahead with the matter as per the provisions of law in respect of the land bearing survey no. 162 and 163 situated at Sonim on the ground that land measuring 18 Kanals 15 Marlas bearing Survey no. 162 is recorded as Gair Mumkin Nalla and land measuring 18 Kanal 18 Marlas bearing survey no. 163 is recorded as Mehfooz Kahcharie land. Plaintiffs/ applicants have encroached upon the same by planting trees so as to grab the land supra and to squeeze the water stream/ nalla. Tehsilcar Kunzer defendant no.4 has after serving notices upon the Plaintiffs/ non- applicants herein and providing them opportunity of being heard directed them to remove

encroachments from the land nalla/ water stream supra as well as the Kahcharie land however plaintiffs/ non-applicants have failed to remove the same as such drive is being conducted by Tehsildar Kunzer for removal of encroachments in terms of the land revenue Act. As such drive is being conducted by the Ld Tehsildar Kunzer for removal of encroachment in terms of provisions of JK Land Revenue Act so as to retrieve the water stream/nalla and the said kahcharaie land in question to its original position. The defendant no 03 / applicant there in for utilization of allotted funds for cleaning and clearing the already squeezed nallah and restore the same to its original position has undertaken certain works upon which the funds can be utilized and maximum possible benefits are obtained from the said works which shall cater the needs of the large population of the locality. Due to clearance and cleaning

of said nallah is not being merged with the road. In fact by cleaning nallah same is not being merged with the road, said activity is rather being carried out in order to cater the needs of maximum number of individuals, agriculturalists by allowing free flow of water through the said nalla, but under the pretext of order dated 16-02-2024 passed by this Court the plaintiffs are misconstruing the said order and are not allowing the defendant no 3/ applicant therein to proceed ahead in the matter as per the mandate of law. In case funds allotted are not utilized at an earliest for allotted works same may lapse due to the closure of the ongoing financial year.

9. On the other hand plaintiffs/ applicants in the objections filed has resisted the application on the ground that the defendant no.3/ applicant has not approached this court with clean hands. He has taken

recourse to concoction and fabrication. Defendants' no.3 and 4 have filed their reply separately and have contended that they have received the landed property for construction of the playfield from defendant no.4 after clearing the same from the encroachers. Work in question has been sanctioned under MGNREGA Scheme. Nomenclature of the work as per the annual action plan 2023-24 clearly indicates that work in question has been sanctioned under MGNREGA under the name of Diversion of Nalla near playfield Sonim. Construction/ diversion is totally against the law and norms. Chief Engineer Irrigation and Flood Control Vide Order/ Circular No. 13614-638 dated 29.03.2021 banned the construction of Culverts, bridges and tractor crossings etc over the water bodies, such as rivers, Nallahs, Streams and canals. No NOC has been obtained for the diversion in question by the

defendants. Defendant no.3 / applicant is going ahead with diversion process in violation of law.

11. This court has passed the order in the application for interim relief in ex-parte to the extent that the defendants no 5 to 7 shall maintain status quo on spot with respect to the suit property. Land bearing survey no. 162 measuring 18 Kanals and 15 Marlas is recorded as Gair Mumkin Nalla and land measuring 18 Kanals 18 Marlas bearing survey no. 163 situated at Sonim is recorded as Mahfooz Kahcharie. Status of the land supra is not denied by either party to lis. Land supra falls within the category of prohibited shamilat land. Tehsildar Kunzar in his report has submitted that he has removed encroachment out of the land supra. In case defendant no.3/ applicant is intending to convert the land recorded as Gair Mumkin Nahalla without obtaining N.O.C from the A.E.E./ Executive Engineer

Irrigation and Flood Control plaintiffs are at liberty to approach the authorities empowered in this regard under **Jammu & Kashmir Water Resources (Regulation and Management) Act, 2010** as authorities mentioned in the Act supra are empowered to remove encroachment from the water stream / Nahalla and to prevent its conversion etc.

The ld. counsel for the defendant no.3/ applicant has rather submitted that they are using allotted

funds for cleaning and clearing the already squeezed nallah and restore the same to its original position.

Order dated 16-02-2024, passed by this court in the application for interim relief is clear and unambiguous

as by virtue of the aforesaid order this court has

(directed only private defendants no 5 to 7 to maintain

status quo on spot in respect of the suit property.


Status quo means that character, nature and features

of the suit property shall not be changed in any manner. This court has not so far passed any order against official defendants including defendant no.3 in the above captioned application for interim relief as the defendants have not so far submitted objections to the same. Application requires no further proceedings same is accordingly disposed of be made part of the application for grant of interim relief. ✓

Announced in open court
Today on 09.03.2024
PA, Malik Showkat

Digitally signed by
ALTAH HUSSAIN KHAN
Sub Judge Pattan

copy of the order is forwarded to SHO P/S Pattan for information.


Sub Judge Pattan
Judicial Magistrate 1st Class
Pattan

Court of 1st Additional District Judge, Baramulla.

In the case of:

1. Gh. Mustafa Malla S/O Gh. Rasool Malla
2. Mohammad Assadullah Malla S/O Lt. Gh. Ahmad Malla
Both Residents of Sonium Tehsil Kunzer Dist. Baramulla

.....Appellants

Through: Adv. Javed Ah. Parray for appellants.

VERSUS

1. Union Territory of J&K through Commissioner Secretary
to the Rural Development Department at Civil Secretariat, Sgr./Jmu.
2. Asst. Commissioner Development Baramulla.
3. Block Development Officer, Lalpora Tangmarg
4. Tehsildar Kunzer
5. Gh. Mohammad Malla S/O Ali Mohammad Mulla
6. Iqbal Hussain Malla S/O Gh. Hussain Malla
Both residents of village Sonium Tehsil Kunzer Dist. Baramulla
7. Shabir Ahmad Sofi S/O Gh. Rasool Sofi
R/O Kanloo Tehsil Pattan Dist. Baramulla

.....Contested Respondents

8. Mohammad Qasim Malla S/O Ali Mohammad Malla
9. Gh. Hussain Malla S/O Lt. Gh. Rasool Malla
10. Gh. Ahmad Malla S/O Ali Mohammad Malla
All Resident of Village Sonium Tehsil Kunzer Dist. Bla.

.....Proforma Respondents.

Through: Nemo

In the Matter of:

Appeal against order dated 09.03.2024 passed by learned Sub-Judge Civil Judge Sr. Division Pattan in the application made by respondent No. 3 for clarification.

And

Application for grant of interim relief.

**Coram: Pawan Kumar Sharma
J.O.Code: JK00135**

ORDER

1. The instant appeal has been assigned to this Court by learned Principal District Judge, Baramulla for disposal under law and was presented before this Court today. Let the appeal be diarized in the concerned register. Appellants along with counsel present. The appeal is filed.

against the order dated 09.03.2024 (hereinafter referred to as **impugned order**) passed by learned Sub-Judge (Civil Judge Sr. Division) Pattan in an application preferred defendant No. 3 for clarification. Office is directed to issue notice to other side and put up on 30.03.2024.

IA/01/2023

Application seeking leave to file the appeal:

- The appellants have filed this application seeking leave to file the above titled appeal on the strength of the photocopy of the impugned order with liberty to place on record the certificate copy as and when the same are available to them. On the grounds mentioned in the application, the appellants are allowed to file the appeal without certified copy and are directed to produce the certified copy of impugned order on next date of hearing. Application is disposed of and be made part of the appeal.

IA/02/2023

Application for grant of interim relief.

- The appellants along with the appeal above captioned have made this application for grant of interim relief, which is supported by duly sworn affidavit. Issue notice to other-side in this application also, in the meanwhile the operation of impugned order dated 09.03.2024 shall remain stayed. Parties are also directed to maintain status-quo on spot with regard to suit property (briefly mentioned in the appeal). Scanned record of the case shall also be called from the trial Court. Put up on 30.03.2024.

Announced
09.03.2024

Y. D. Jini
Ist Addl. District Judge,
Baramulla.

*Copy of order placed with copy of affidavit
forwarded to respondent's side for information
of compliance steps not saved properly case
Jagmohan / Pattan
by Jini
11-11-11 Addl. District Judge, Baramulla*

*Not-25-34-100/13
Ad. 9/3/2024*

BEFORE THE HON'BLE COURT OF PRINCIPAL DISTRICT JUDGE
BARRAMULLA.

IN THE CASE OF:- Civil Appeal Captioned below:-

1. Ghulam Mustafa Malla aged 45 Years S/o Ghulam Rasool Malla.
2. Mohammad Assadullah Malla aged 62 Years son of Late Ghulam Ahmad Malla, both residents of Village Sonium Tehsil Kunzer & District Barramulla.

...Appellants.

Versus

1. Union Territory of Jammu & Kashmir through Commissioner Secretary to the Rural Development department at Civil Secretariat Srinagar/Jammu.
2. Assistant Commissioner Development Barramulla.
3. Block Development officer Lalpora Tangmarg.
4. Tehsildar Kunzer.
5. Ghulam Mohammad Malla S/o Ali Mohammad Malla.
6. Iqbal Hussain Malla S/o Ghulam Hussain Malla, both residents of Village Sonium Tehsil Kunzer & District Barramulla.
7. Shabir Ahmad Sofi S/o Ghulam Rasool Sofi R/o Kanloo Tehsil Pattan & District Barramulla.

.....Contested Respondents.

8. Mohammad Qasim Malla aged 55 Years S/o Ali Mohammad Malla.
9. Ghulam Hussain Malla aged 60 Years S/o Late Ghulam Rasool Malla.
10. Ghulam Ahmad Malla aged 56 Years S/o Ali Mohammad Malla, all residents of Village Sonium Tehsil Kunzer & District Barramulla.

...Pro-forma respondents.

IN MATTER OF:- Appeal against the order dated 09-03-2024 passed by Sub-judge/Civil Judge Senior Division Pattan in the above captioned Civil Suit on the application for clarification made by the respondent No. 03.

May it please your Honour.

The appellants most humbly submit as under:-



1. That the appellants are the residents of the Union Territory of J&K and are residing at Sonium Pattan, within the jurisdiction of this Hon'ble Court, as such are within their rights to invoke the jurisdiction of this hon'ble court for the protection & enforcement of their rights
2. That the appellants have no other alternative and efficacious remedy other than the present appeal, further the appellants have not approached to any other court or forum in the present cause, other than this Hon'ble court by way of the present appeal.
3. That the brief facts giving rise to the instant appeal are as under:-
 - a. That the appellants along with their respective co-sharers are the owners in possession of the landed property falling under Survey Numbers 165, 166 and 405 measuring 18 Kanals situated at Mouza Sonium Kunzer, having inherited the same from their ancestors and the landed property in question being agricultural in nature is serving as a source of livelihood for the appellants and their respective families, for the proper cultivation and utilization of which the rural development department has through Block Office Lalpora constructed the road under the MGNREGA Scheme by the use of the river bed/Nallah Mukh material during the financial Year 2022-2023.
 - b. That adjacent to the landed properties of the appellants and alongside the pathway there runs a Nallah/Water Stream, popularly known by the name of Ara in Kashmiri dialect through the Survey Numbers 162, 163 and 403, which often remains at the brim, particularly during the rainy season and acts as a source to drain out the flood waters and thereby safeguards the adjacent landed properties from getting washed away. The water stream/Nallah serves as a source of irrigation for the appellants and the lower riparian owners as well. It is worthwhile to mention over here that the stream/Nallah is existing on the spot from times immemorial.
 - c. That since the stream in question serves as a backbone for the agricultural and horticultural operations in the area, besides serving as a source to drain out the flood waters and saving and

safe-guarding the agricultural and horticultural fields in the areas adjacent to which the same is passing through.

(2) That the respondent No 03 under a well-knit conspiracy with the private respondents 06 & 07 managed to sanction the work of the diversion of the Nallah/water stream near play field Sonium with an intent to convert the same into the play field, however, given the prohibition provided by the law against the conversion of the water bodies the technical sanction as well as the administrative approval has been accorded for the work, "**development of the play field at Sonium**" thus the defendants 06 and 07 started to executed the work of the diversion of the Nallah in the immediate vicinity of the landed property of the appellants as well as the pro-forma respondents without following the procedure established by the law and thereby endanger the proprietary land of the appellants, thus the appellants and the pro-forma respondents filed the civil suit caption Ghulam Mustafa Malla & others v/s Union Territory of J&K & others before the Hon'ble Court of Sub-judge Pattan, hercin-after called the Ld. Court below and the Ld. Court below passed an ex-parte order in the case on 16-02-2024 and thereby directed the respondents 06 & 07 to maintain the status quo on the spot with respect to the subject matter of the suit. The copy of the order is annexed herewith for the kind perusal of this Hon'ble Court and is marked as ANNEXURE A-1.

a. That the respondents 02 & 03 filed their reply separately on 19-02-2024, in which the respondent No. 03 contended to taken over the landed property recorded under Survey Numbers 162, 163 and 403 from the defendant No. 02 for the construction of the playground/playfield at Sonium and the respondent No. 02 stated in his reply that the work after the spot alignment has been handed

over to the mates, i.e., the respondents 06 & 07, while as the respondent No. 02 remained tight lipped and did not utter a word about the handing over the Nallah to the defendant No. 03 for development of the play-field.

- b. That it is worthwhile to mention over here that the NOC sought by the respondent No. 03 from the department holding control of the Nallah as per Section 81 of the J&K Water Resources Act 2010, viz., the I&F Department has been denied and the respondent No. 03 has been required to undone the violation affected by him on the spot by the Executive Engineer Irrigation and Flood Control Tail Race Kunzer vide his order dated 23-02-2024. The copy of the order is annexed herewith as **ANNEXURE A-2**.
- c. That after filling his reply the respondent No. 03 as an afterthought preferred to file an application for clarification before the Ld. Court below and thereby in disguise sought modification of the order dated 16-02-2024 by pretending that the order has been passed only against the respondents 06 & 07, as such he is not debarred to carry-out the construction and the Ld. Court below after obtaining the objections from the appellants in essence modified the order dated 16-02-2024 by passing an order of clarification on 09-03-2024 by holding that no orders have been passed against the respondent No. 03, thus granted a lease to the respondent No. 03 to render the suit of the appellants as infructuous and allow the respondent No. 03 to affect conversion of the Nallah into the play-field. The copy of the order is annexed herewith and is marked as **ANNEXURE A-3**.
4. That the appellants are aggrieved by the order Dated 09-03-2024, i.e., the **ANNEXURE A-3**, herein-after called the impugned order and assail the same on the following grounds, which are taken in alternative and without prejudice to each other.

- g) That the observations about the lack of jurisdiction by the Ld. Court below in the impugned order indicates that the facts of the case have been misconceived by the Ld. Court below, in that the appellants have not claimed any ownership right over the state land and the land recorded and existing as Gair-Mumkin Nallah and there endeavour is to safe-guard their own proprietary land against any damage that may ensue due to the diversion of the Nallah, which is triable by only the civil court, therefore, the impugned order is bad in the eyes of the law and the same merits to be set-aside.
- h) That the appellants reserve their right to urge further grounds at the time of the arguments.

In the premises it is, therefore, prayed that the appeal be accepted and the impugned order be reversed and set-aside. For the same would be in consonance with the law and justice.

Appellants through counsel.

GROUNDS

- a) That the impugned order is illegal, illogical and has been passed on extraneous considerations, as such the same is not sustainable in the eyes of the law, thus merits to be set-aside.
- b) That the impugned order is arbitrary, capricious and has been passed without the application of judicial mind, as the same stands passed in a casual and cavalier manner, as such the same merits to be set aside.
- c) That the impugned order in essence is modification of the ad-interim order dated 16-02-2024, in that the respondent No. 03 in his reply filed on 19-02-2024 has admitted to have handed over the work for the execution to the respondents 06 & 07, thus under such circumstances the respondent No. 03 is persona non-grata in so far as the execution of the work on the spot is concerned and the L.d. Court below instead of proceeding to have issued the clarification of the order dated 16-02-2024 ought to decided the interim application on merits, by considering the loss likely to be caused to the proprietary land of the appellants by the diversion of the Nallah to the vicinity of their land, thus the impugned order is bad in the eyes of the law, hence the same merits to be set-aside.
- d) That the respondent No. 03 is taking the law into his own hands by illegally converting the Nallah/Water Stream into the playfield. It is submitted that as per Section 81 of the J&K Water Resources Management Act 2010 the Water Bodies, including streams, rivers, Nallahs and Springs, etc., are with the control of the I&FC Department and no diversion or conversion can be made unless NOC is obtained from the I&FC Department. In the present case the motion for the NOC

15/6
is
no

BEFORE THE HON'BLE COURT OF PRINCIPAL DISTRICT
JUDGE AT BARRAMULLA.

IN THE CASE OF:- Civil appeal Captioned below:-

1. Ghulam Mustafa Malla aged 45 Years S/o Ghulam Rasool Malla.
2. Mohammad Assadullah Malla aged 62 Years son of Late Ghulam Ahmad Malla, both residents of Village Sonium Tehsil Kunzer & District Barramulla.

...Applicants.

Versus

1. Union Territory of Jammu & Kashmir through Commissioner Secretary to the Rural Development department at Civil Secretariat Srinagar/Jammu.
2. Assistant Commissioner Development Barramulla.
3. Block Development officer Lalpora Tangmarg.
4. Tehsildar Kunzer.
5. Ghulam Mohammad Malla S/o Ali Mohammad Malla.
6. Iqbal Hussain Malla S/o Ghulam Hussain Malla, both residents of Village Sonium Tehsil Kunzer & District Barramulla.
7. Shabir Ahmad Sofi S/o Ghulam Rasool Sofi R/o Kanloo Tehsil Pattan & District Barramulla & others.

...Non-applicants.

IN THE MATTER OF:- Application for the grant of interim relief.

May it please your Honour.

The applicants most humbly submit as under:-

1. That the applicants have filed the above captioned appeal before this Hon'ble court which is pending for disposal.
2. That the applicants have a very strong prima facie case and are sure to succeed on its merits.

that the balance of convenience lies in favour of passing an order of interim relief to stay the operation of the impugned order, for otherwise the applicants are sure to suffer an irreparable loss, which cannot be atoned by any amount of compensation in terms of money latter on.

4. Hence this application.
5. That the applicants crave the leave of this hon'ble court to rely upon, refer to and adopt in extenso the averments made in the main appeal for the disposal of the instant interim application also.

In the premises it is therefore prayed, that pending disposal of the main appeal the operation of the impugned order dated 09-03-2024 be stayed. For which act of kindness the applicants as are duty bound in law shall ever pray.

Applicants through counsel.

ANNEXURE 210 F

Government of Jammu & Kashmir

Office of The Sub Divisional Magistrate Gulmarg

Email Id: - sdmgulmarg@jammu.gov.in

Phone/Fax: 01954-254635

Subject: Execution of Work- Providing of NOC, thereof (Development of Playfield at Sonium side at Halqa Sonium).

ORDER

As requested by the Executive Engineer F.B.I Division Tangmarg vide no. FBID/8104-07 Dated: 09/03/2024 a joint team of below mentioned officers is hereby constituted who shall visit the spot and shall ascertain the actual proposal which can be executed on ground without any damage to the existing course of nalah.

1. Tehsildar Kunzer.
2. Block Development officer Lalpora.
3. AEE Irrigation Sub Division Kunzer.
4. Zildar Canals Kunzer.
5. Area Incharge Geology and Mining Department.

No: - SDM/G/2024/ 2246-50

Dated: 11 /03/2024


Sub Divisional Magistrate
Gulmarg

Copy to the:

1. All concerned for information and n/a

Government of Jammu and Kashmir
OFFICE OF THE TEHSILDAR KUNZER

مستند ظکھر درجہ اول / اہلکار نگہبانو مسطوریت درجہ اول
Executive Magistrate Class 1st / Assistant Collector 1st Class

Print Date : 3/9/2025

The Sub Divisional Magistrate,
Gulmarg.

Subject: Execution of Work-providing of NOC, thereof (Development of playfield at Sonium side at Halqa Sonium)

Sir,

In compliance to the order issued from your office vide No. SDM/G/2024/2246-50 Dated: 11/03/2024, it is submitted that on 13/03/2024, all the team members including undersigned along with Patwari Halqa Concerned were present on spot. The Demarcation was conducted in presence of Block Development Officer Lalpora, AEE Irrigation Sub Division Kunzer, Zildar Canals Kunzer, Area Incharge Geology & Minning Department and original course of Nallah was shown to the team members, and public who were present on spot.

It is pertinent to mention that the original course of Nallah/Kuhl has not been changed.

Hence the report is submitted for favor of further necessary action at your end

No. TK/OQ/2023-24/700-05

Dated: 14/03/2024

Yours faithfully

Tehsildar Kunzer

Copy to the :

1. The Block Development Officer Lalpora for information
2. The Assistant Executive Engineer Irrigation Sub Division Kunzer, for information
3. The Zildar Canals Kunzer for information
4. The Area Incharge Geology & Minning Department for information
5. File for records.

ANNEXURE 272 M

Email Id: - sdmgulmarg2014@gmail.com

Phone/Fax: 01954254635

Government of Jammu & Kashmir

OFFICE OF THE SUB DIVISIONAL MAGISTRATE GULMARG

The Block Development Officer,
Lolpora

Subject:- Execution of Work- providing of NOC, thereof (Development of playfield at Sonium side at Halqa Sonium.

Sir,

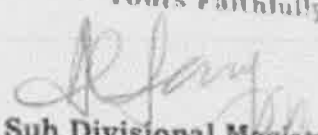
Kindly find herewith a copy of communication received from the Executive Engineer FBI Division Tangmarg (copy enclosed), and communication received from the Office of Tehsildar Tangmarg (copy enclosed) wherein it has been communicated that original course of nallah/ khul has not been changed.

In this regard you are directed to proceed ahead without further delay in executing the subject work. Action taken report be submitted to this office at an earliest.

No: - SDM/G/2024/346

Dated: 16 /03/2024

Yours Faithfully


Sub Divisional Magistrate
Gulmarg

Email Id: -

Phone/Fax: 01954254635

Government of Jammu & Kashmir

OFFICE OF THE SUB DIVISIONAL MAGISTRATE GULMARG

The Executive Engineer,
FBI Division Tangmarg.

Subject: Execution of Work-providing of NOC, thereof (Development of playfield at Sonium side at Halqa Sonium.

Sir,

Anent the subject, In continuation to your endorsement no. FBID/8104-07 Dated 09/03/2024, a team of officers/ officials vide this office order no. SDM/G/2024/2246-50 Dated: 11.03.2024 was constituted, wherein the constituted team was directed to visit the spot and shall ascertain the actual proposal which can be executed on ground without any damage to the existing course of Nallah.

In this regard the report sought from the constituted team vide no. TK/OQ/2023-24/700-05 Dated 14.03.2024 reveals that original course of Nallah/ Kuhl has not been changed (copy enclosed).

In this context you are requested to take appropriate necessary action in this regard under intimation to this office.

No: - SDM/G/2024/ >>88

Dated: 15/03/2024

Yours Faithfully,


Sub Divisional Magistrate
Gulmarg

Government of Jammu and Kashmir

OFFICE OF THE TEHSILDAR KUNZER

اسستت کلکٹر درجہ اول / ایگزیکوٹیو مجسٹریٹ درجہ اول

Executive Magistrate Class 1st / Assistant Collector 1st Class

Email, tehkunzer-rev@jk.gov.in / tehsilofficekunzer@gmail.com

The Sub Divisional Magistrate,
Gulmarg.

Subject: Execution of Work-providing of NOC, thereof (Development of playfield at Sonium side at Halqa Sonium)

Sir,

In compliance to the order issued from your office vide No. SDM/G/2024/2246-50 Dated: 11/03/2024, it is submitted that on 13/03/2024, all the team members including undersigned along with Patwari Halqa Concerned were present on spot. The Demarcation was conducted in presence of Block Development Officer Lalpora, AEE Irrigation Sub Division Kunzer, Zildar Canals Kunzer, Area Incharge Geology & Minning Department and original course of Nallah was shown to the team members, and public who were present on spot.

It is pertinent to mention that the original course of Nallah/Kuhl has not been changed.

Hence the report is submitted for favor of further necessary action at your end

No. TK/OQ/2023-24/700-05

Dated: 14/03/2024

Yours faithfully

Tehsildar Kunzer
14/03/2024
TEHSILDAR KUNZER

Copy to the :

1. The Block Development Officer Lalpora for information
2. The Assistant Executive Engineer Irrigation Sub Division Kunzer, for information
3. The Zildar Canals Kunzer for information
4. The Area Incharge Geology & Minning Department for information
5. File for records.

The Sub Divisional Magistrate,
Gulmarg
H.Q Tangmarg.

No.: - FBID/7970/24
Dated:- 07/03/2024

Sub.: - Execution of Work- Providing of NOC, thereof (Development of Playfield at Sonium Side at Halqa Sonium).

- Ref.: - 1. Your Office letter no.: - SDM/G/2024/3204 Dated:-29-02-2024.
2. This Office Letter No.: - FBID/ 7970, Dated:-29-02-2024.
3. Assistant Executive Engineer Tail Race Sub Division Kunzer letter no.'s:- TRK/1125, Dated:- 28-02-2024, TRK/1067-69, Dated:- 05-02-2024, TRK/1110, Dated:- 28-02-2024.
4. BDO Lalpora letter no.'s:- BP/WS/1047-1048, Dated:-27-01-2024, No.: -BI/WS/1149-51, Dated:- 05-02-2024.

Sir,

With reference to above cited communication under reference. In this context, it is stated here that the BDO Lalpora has approached to Assistant Executive Engineer Tail Race Sub Division Kunzer for issuance of NOC on account of Development of playfield at Sonium side at Halqa Sonium under "MGNERGA". Accordingly the Assistant Executive Engineer Tail Race Sub Division Kunzer furnished a report wherein he conveyed to this office that the mere approval of the GPDG does not suffice for the execution of work near water bodies, as it falls under the jurisdiction of the **State Water Resource (Regulation and Management) Act 2010**. It is pertinent to mention here that the BDO concerned changed proposal time and again as per site plan proposed (Copy enclosed). It is necessary to demarcate the said spot of Nalla before further processing the case. It is also worth to mention that some locals of the other side are totally opposing the diversion of the Nallah as proposed by concerned Block Development Officer. In addition to this, it is not technically feasible to change the natural present course of Nallah as the same may lead to problems during floods.

In light of above circumstances, it is requested that the joint team may kindly be constituted as soon as possible who will ascertain the actual proposal, which can be executed on ground without any damage to the existing course of Nallah.

Yours Faithfully,

Executive Engineer
E.B.I Division Tangmarg

Copy to the: -

1. Assistant Commissioner Development Baranulla for favour of information.
2. Tehsildar Kunzer for information
3. Assistant Executive Engineer Tail Race Sub Division Kunzer for information and necessary action. This is with reference to your no.'s referred above
4. CC for records.

GOVERNMENT OF JAMMU AND KASHMIR
Office of the Block Development Officer, Lalpora

Email: bdolalpora16@gmail.com

The Assistant Executive Engineer,
 Tail Race Subdivision,
 Kunzer, Baramulla.

Subject: Execution of Work - Providing of NOC Thereof (Development of Playfield at Sonium Side at Halqa Sonium)

Reference: Your Letter No: TRK/1110-12 Dated 23-02-2024.

Sir,

With reference to the subject cited above and your letter referenced TRK/1110-12 dated 23rd February 2024, it is to state that:

Whereas, during the preparation of the Gram Panchayat Development Plan (GPDP), frontline workers from all departments, including employees from your subdivision, were involved in the planning process. The proposal for the construction of the playfield and the maintenance of the Nallah was put forward by the Panchayat body, during which employee from your department authenticated the plan for approval from the competent authority, indicating that the work is being executed under convergence mode for which your approval is deemed to have been sought in advance.


Furthermore, the revenue authorities have visited the site and have apprised this office with Intikhab/Jamabandi, in which they have stated that the land is categorized as state land and that the construction/maintenance of the Nallah is in accordance with its original course, and there is no diversion at the site.

Whereas, it is imperative to clarify that the term "diversion," mistakenly used in some communications, is not applicable in this context. It refers simply to the maintenance/construction of the Nallah in its original course as demarcated by the revenue authorities under survey number 162.

Whereas, your letter results in some contradiction regarding the issuance of the NOC because your field officials from Sonium Panchayat have already approved the work by signing the GPDP.

Therefore, in light of the above facts, this report is submitted for information and clarification.

Yours Sincerely,


 Block Development Officer
 Lalpora

No: *BU/Ws/1110-12* Date: *28-02-2024*

Copy to the:

- Assistant Commissioner Revenue Baramulla for information.
- SDM Gulmarg for information and necessary action.
- Tehsildar Kunzer for information.