

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN, GILGIT

BEFORE:

Mr. Justice Syed Arshad Hussain Shah, Chief Judge
Mr. Justice Wazir Shakeel Ahmed, Judge

CPLA No.38/2018

(Against judgment dated 29.03.2018 passed by Chief Court in C. Revision No. 139/2017)

Residents of Mouza Makhor, Karis, Beneficiaries of Water Channel Chanma through representatives, (1) Abdul Aziz s/o Abdus Samad, (2) Ghulam Nabi s/o Muhammad Ali, (3) Zakir Ahmed s/o Muhammad Ibrahim, all residents of Karis, District Chanche

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Petitioners

Versus

1. Residents of Mouza Bima Khor, Panzen, Barchhon, Meerpikhori, Kishwa and Morongpa, Karis, through their representatives, (1) Kacho Mohammad Iqbal s/o Kacho Zulfiqar Ali Khan (2) Mohammad Ismail s/o Mohammad Ali; and (3) Syed Mukhtar s/o Sajjad Hussain, all residents of Karis, District Ghanche.
2. Prov. Govt. through Chief Secretary Gilgit-Baltistan
3. District Collector Chanche, Khaplu
4. Chief Engineer (W&P) Baltistan Division Skardu
5. Chief Engineer (B&R) Division, Skardu
6. Executive Engineer (W&P) District Ghanche
7. Mohammad Abbas, Contractor, resident of Hussainabad, Skardu

..... **Respondents**

PRESENT:

For the Petitioners : Malik Shafqat Wali Sr. Advocate

Date of Hearing : **16.10.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:-This judgment shall dispose of the instant Civil Petition for Leave to Appeal directed against the judgment dated 29.03.2018 passed by the learned Gilgit-Baltistan Chief Court in Civil Revision No. 139/2017 whereby, civil revision filed by the present petitioners was dismissed and Orders passed by the learned Courts below were maintained.

2. Brief facts of the case are that a development project under the name of 500 K.W Hydel Power Project Karis Phase-II was

approved by the competent authority/forum. Subsequently, upon objection, site of project was changed by Citing Board from downstream to upstream of the Chanma Channel. However, contrary to decision of Citing Board, official respondents awarded contract of project as per PC-1 instead of decision of Citing Board. This act on the part of official respondents gave birth to reservations and the private respondents termed it detrimental to their water rights. They suspected that in case the project proceeds at its original position, their irrigation system would be disturbed and their water rights over Chanma Channel as envisaged in Riwaj-e-Aabpashi will be infringed. They feared this would also cause destruction of thousands kanals of agriculture land/trees of petitioners. Against this decision, present petitioners instituted Suit No. 21/2017 before the learned Senior Civil Judge Khaplu for declaration and perpetual injunction. Alongwith suit, an application under Order 39 Rules 1 & 2 CPC for grant of status-quo till decision of suit was also filed. The learned Trial Court, after hearing, dismissed that application being devoid of merit. This decision of the learned Trial Court was assailed before the learned District & Sessions Judge, Ghanche by means of CFA N. 20/2017 which too met the same fate vide order dated 28.11.2017. The Order of the learned First Appellate Court was challenged by the present petitioners before the learned Chief Court by way of Civil Revision No. 139/2017, which was also dismissed whereby, Orders passed by the learned Courts below were maintained, hence the instant civil petition for leave to appeal.

3. Learned counsel for the petitioners contended that the learned Gilgit-Baltistan Chief Court as well as learned Lower Courts failed to take into consideration the essential facts that Chanma irrigation channel, which is the only source of irrigating agriculture land of petitioners shall be affected in case the project was constructed downstream the channel which would also be violation of water rights of petitioners, hence impugned orders/judgments so passed were not sustainable in the eyes of law and were liable to be set aside on this score alone. It was next argued by the learned counsel for the petitioners that the learned Courts below failed to apply their judicious

mind to the facts and grounds of cases before them because upon reservations shown by the beneficiary in respect of construction of power house downstream of Chanma Channel, a high power committee (Citing Board) was constituted under Chairman of Chief Engineer Water & Power Division Skardu who decided to shift the power house from downstream of Chanma Channel to its upstream, while contrary to decision of Citing Board, official respondents decided to construct the said project as per specifications of PC-1 which caused violation of water rights of petitioners, hence the impugned judgments/orders passed by all the learned Courts below were not sustainable and were liable to be set aside. Learned counsel for the petitioners maintained that as per documents/Record of Riwaj-e-Abpashi, Chanma Channel was shown to have been irrigating the land coming under it and that in case of construction of power house downstream of said channel would deprive the petitioners from usage of water for irrigating their lands and further would be infringement of water rights of petitioners, hence a development project meant for benefits of the beneficiaries cannot be executed at the cost of rights of other people, hence a fit case for grant of temporary injunctions was before the learned Courts below, who unlawfully refused to grant the same. Concluding his submissions, learned counsel for present the petitioners prayed that judgments/orders passed by the learned Courts below being based on flimsy, perverse, vague absurd, ambiguous grounds as well as the orders were against material facts and law may please be set aside.

4. Arguments of learned counsel for petitioners heard. We have also gone through record as well as impugned judgments/orders.

5. The controversies involved in the case in hand are, firstly there is an order of learned Trial Court on an application filed under Order 39 Rules 1 & 2 CPC refusing grant of injunction to stay execution of a public interest development project namely 500 KW Hydel Power Project Karis Phase-II which was further maintained by the Appellate Courts. Secondly, there are apprehensions of present petitioners that construction of power house downstream of Chanma

Water Channel was violation of their water rights as well as the same would cause to destroy thousand kanals of their irrigation land/trees in case if the water was blocked. It is be noted that the case in hand does not warrant for going into its merits in presence of pendency of suit regarding declaration and perpetual injunction before the learned Trial Court. The only controversy demanding decision by this Court is as to whether a stay is warranted in execution of a public interest development project or not. In this regard, we are of the considered view that a development project undergoes a detailed survey and feasibility carried out by experts of concerned government departments besides due deliberations by executing agency and planning department. It cannot be ruled out that while preparing PC-1 based on survey and feasibility, water rights issues were not taken into consideration. Hence, if the Courts of law resort to suspend execution of development project on the basis of complaints/reservations by general public, except for the reasons in compelling circumstances, no development project could reach to its finality in time which would be either transferred to another area or given up for the reasons of escalation in prices of construction material. Ultimately, it will result in loss to public exchequer besides depriving the beneficiaries from the benefits of project(s). The public interest development projects are being executed by government departments adhering to law and after completing codal formalities/procedures prescribed under the law/rules besides carrying out survey/feasibility, keeping in view the ground realities and water rights of people, therefore in view of significance of development projects for welfare of general public, grant of injunction would tantamount to interference in public duties of government department which cannot be permitted under the law that too merely on the basis of apprehensions of people, unless some compelling reasons demanded the issuance of an injunctive order.

The Supreme Court of Pakistan in a case title Watan Party v Federation of Pakistan reported as PLD 2013 SC 167 has held as under: -

“Petitioners contended that policies and priorities of the Government with regard to the project in question were neither pragmatic nor bona fide, therefore, Supreme Court should issue necessary

directions to expedite the completion of the project, which was likely to play a vital role in the economic development of the country and for the betterment of the poor people---Validity--- Policies were to be made by the respective Federal and Provincial Governments and all decisions regarding their implementation were also to be taken by them on the basis of determined priorities of different projects and availability of financial resources at their disposal---Such exercise could not be ordinarily interfered with by the Supreme Court....”

Section 56(d) of the Specific Relief Act is very much clear about it, which for ready reference, is reproduced herein below:

“56. An injunction cannot be granted:-

(d) to interfere with the public duties of any department of the Government or with the sovereign acts of Foreign Government”

6. As far as decision of Citing Board regarding shifting of power house from downstream to upstream of Chanma Channel is concerned, it would be congruent to mention here that the decision of Citing Board at District/Division level had no legal value unless it was done with due approval of competent authority/forum who approved PC-1 and thereafter it could incorporate requisite changes/amendments in PC-1. No material has been placed on record to substantiate that any case to this effect was taken up with competent authority seeking approval for modifications/change of site by the subordinate authorities of Water & Power Division Skardu or District Administration. Therefore, contentions of learned counsel for the petitioners as to requirement of construction of power house downstream instead of upstream of Chanma Channel as per decision of Citing Board are not tenable thus, are repelled.

7. More importantly, the present respondents No 4 &6 (Chief Engineer Water & Power Division Skardu & Executive Engineer Water & Power Division Ghance) have undertaken in their para-wise comments submitted before the learned District & Sessions Judge, Ghanche that they would not disturb water rights of petitioners. In furtherance to their undertaking before the learned Lower Court(s), we also direct the present respondents No. 4 & 6 to ensure that water rights of present petitioners are not disturbed during construction as well as

after completion and running of the said power house. We also direct the Commissioner Baltistan Division and Deputy Commissioner Ghanche that if any genuine water issue arises to the present petitioners during the construction or after completion of the said power house, they shall resolve the same on permanent basis in coordination of authorities of Water & Power Division Skardu/Ghance so that the petitioners may not suffer in terms of irrigation of their lands/trees sanctioned from Chanma Channel.

8. In the above terms, the instant civil petition for leave to appeal is disposed of. The impugned judgment passed by the learned Chief Court as well as the Judgments of learned Courts below are modified to the extent as explained in preceding para.

Chief Judge

Judge

Whether fit for reporting (**Yes / No**)